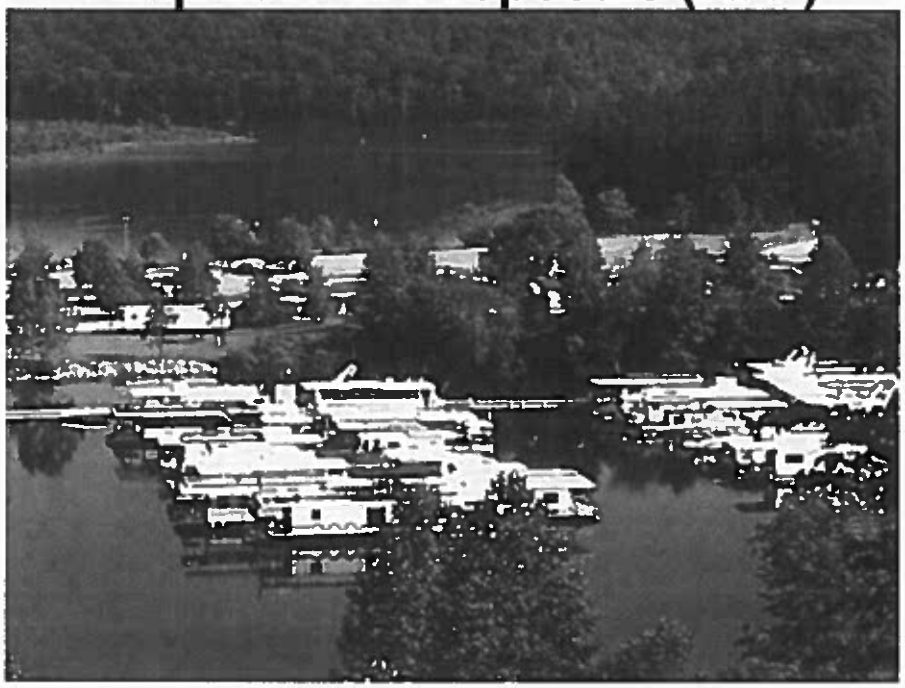
COMMONWEALTH OF KENTUCKY

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

Request For Proposals (RFP)



Project Name: PAINTSVILLE LAKE MARINA FACILITY
Proposal Number: #121020

IMPORTANT: PROPOSALS MUST BE RECEIVED BY:
December 10, 2020 @ 2:00 p.m.

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

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I. INTRODUCTION

The Commonwealth of Kentucky ("Commonwealth") desires to continue offering a marina amenity at Paintsville Lake State Park in Staffordsville, Kentucky ("Park"). To that end, the Commonwealth solicits proposals from private, third-party developers and operators who will furnish a first class, high quality marina operation at the Park ("Project"), either with existing marina structures and/or through the financing, design, and construction of new marina structures, and to operate and maintain the marina to the standards of the Kentucky Department of Parks ("Department of Parks").

The Commonwealth desires to sublease to a private concern a portion of the Park shoreline and water area for the Project ("Subleased Premises"). See attached Exhibit A.

The Commonwealth has determined that the most feasible and responsible means for completing the Project is by and with private participation through the issuing of this Request for Proposals ("RFP") and a proposed sublease agreement between the Commonwealth and the successful Offeror resulting from this solicitation ("Sublease").

The Department of Parks manages the Park under the terms of Lease Agreement DACW69-1-84-0144 between the United States Army Corps of Engineers ("USACE") and the Commonwealth ("Prime Lease"), which began May 1, 1984, and expires April 30, 2034 (see attached Exhibit B). The Commonwealth is currently working with USACE to extend the expiration date of the Prime Lease; however, the Commonwealth does not anticipate that the new lease agreement will be executed prior to the award of the Sublease. The Commonwealth's letter to USACE is attached as Exhibit C. Once a reply has been received from USACE, it will be posted as an amendment to this RFP.

The current marina operation at the Park is subleased to a private entity; however, the sublease has expired with no options for renewal. The current operator has the right to remove the marina structures and all of its appurtenances from the current subleased premises. If an Offeror chooses to utilize existing marina structures, the Commonwealth expects these facilities to be renovated, in accordance with Section IV Marina Facility herein. The final specifications for the marina rehabilitation will be finalized in contract negotiations, and the Commonwealth reserves the right not to award a contract, if an agreement cannot be reached.

The successful Offeror shall have sixty (60) days from the date of Sublease award to provide drawings and specifications of the proposed new marina facility <u>OR</u> evidence of ownership/purchase of the existing marina facility accompanied by drawings and specifications for, at a minimum, the RFP-required improvements to the existing marina facility.

Based on the detailed requirements, plans, specifications, terms and conditions set forth in this RFP, the Commonwealth herewith solicits proposals from prospective developers and operators who can demonstrate the necessary capability to successfully furnish, construct, and/or rehabilitate a marina facility, and maintain, operate, and manage said facility at its optimum potential for an initial term of thirteen (13) years (January 1, 2021 – December 31, 2033).

The Commonwealth may consider extending the Sublease beyond the initial term as described in more detail in Section V, Subsection D; however, prior to exercising any future options, the Commonwealth reserves the right to amend the Sublease and any of its terms or conditions.

In consideration of the successful Offeror's furnishing, constructing, and/or rehabilitating a marina facility, and maintaining, operating, and managing said facility, as well as the revenues received, the Commonwealth is willing to sublease to the successful Offeror the property described herein.

II. LOCATION - EXISTING STATE PARK FACILITIES AND BACKGROUND

The Park is situated on Paintsville Lake, which is owned and operated by USACE. The lake contains 1,140 surface acres of water and 57 miles of shoreline.

The Park is comprised of approximately 242 acres of land and water area, leased by the Commonwealth from USACE via the Prime Lease, and operated by the Department of Parks.

The Park includes an existing full-service marina, which offers 52 open slips, 116 covered slips, a restaurant, boat and fishing supplies, and boat rentals. Depending upon post-solicitation arrangements, the award of this solicitation will either replace or improve the existing marina.

The Park also offers a year-round, 42-site campground; 32 sites are developed with full service hookups, and 10 sites offer primitive camping. The campground includes restrooms, showers, and laundry. Two of the developed sites are adapted for the disabled.

The Park also offers water and lakefront recreation opportunities via boat launch ramp, courtesy dock, shelters, picnic tables, grills, playgrounds, and recreation courts.

USACE prohibits alcohol at or on Paintsville Lake. As a result, the resulting Sublease will prohibit alcohol on the Subleased Premises.

III. RFP GENERAL PROCEDURAL INFORMATION

A. Pre-Bid Conference

If conditions dictate, a site meeting at the marina facility may be scheduled by this office. If a site visit is scheduled, it is anticipated that representatives from the Department of Parks, the Department for Facilities Management, and USACE may be in attendance to answer questions from prospective Offerors. Please contact the Buyer below in order to schedule a site visit prior to December 1, 2020.

Although a question and answer session may occur at the meeting, participants should understand that the final official answer or position of the Commonwealth on any material points will be stated in writing and distributed to all Offerors. Offerors will be encouraged to submit written questions prior to any proposed on-site meeting. All inquiries should be directed to the Finance and Administration Cabinet, Division of Real Properties, Attention: Nancy E. Brownlee, Bush Building, 3rd Floor, 403 Wapping Street, Frankfort, Kentucky 40601, (502) 782-0358 and nancy.brownlee@ky.gov .

B. RFP Addenda

This RFP may be supplemented or amended at any time by appropriate addenda, which will be distributed 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 addenda and enclosures thereto, and those terms and conditions contained in the Prime Lease, DACW69-1-84-0144, dated May 1, 1984, between USACE and the Commonwealth (Exhibit B).

Each Offeror has the responsibility of delivering his/her proposal by the time and the place prescribed in this RFP. Proposals received prior to the closing for receipt of proposals will remain unopened until the time set for opening proposals. Any proposal received after the date and time specified in this RFP may be rejected and returned unopened to the Offeror. The Commonwealth and its officials and employees shall not be responsible 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 award of a sublease has been made.

All proposals shall be deemed an offer acceptable within a period of one hundred and twenty (120) calendar days after the closing date for receipt of proposals (see proposal guaranty at Paragraph G, infra).

D. Inquiries

Contact with Commonwealth agents for information specific to bidding procedures and/or regulations, programmatic, technical, or site specifications or location shall be limited to the Division of Real Property, Attention: Nancy E. Brownlee, 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 to award a sublease or to pay for the costs incurred in the preparation of a response to this request.

The Commonwealth 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 sublease resulting from this RFP shall be binding on the Commonwealth until it has been approved by the Secretary, Finance and Administration Cabinet and USACE.

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 Sublease.

This RFP is issued and any existing facilities are offered in an "as is, where is" condition. There is no warranty given as to any structural, electrical, or 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 successful Offeror from the date of award of this RFP throughout the resulting agreement.

F. Issuing Office

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

G. Proposal Guaranty

1. Offeror's proposal must be accompanied by a certified or cashier's check, made payable to the "Kentucky State Treasurer", in the amount of Seven Thousand Five Hundred Dollars ($7,500.00).

   Upon award of the Sublease or cancellation of the solicitation, the certified or cashier's check of the unsuccessful Offerors will be returned immediately. The certified or cashier's check of the successful Offeror will be returned upon receipt of the performance and payment bonds enumerated herein.

2. In the event an Offeror's proposal is accepted and the Offeror shall fail to execute the Sublease within ten (10) calendar days after its receipt by the 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.

H. 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.**

IV. MARINA FACILITY

The existing marina is subleased through a land sublease, to a private operator, whose agreement has expired with no options for renewal. The marina currently offers 116 covered slips for pontoons, bay liners, fishing boats, and other similar vessels on Docks A, B, and C; 52 open slips for houseboats on Docks D and E; a restaurant; a store offering boat and fishing supplies, merchandise, and other staple items; and rental of fishing boats, pontoons and pedal boats. An aerial view of the existing marina facility layout is visible on Exhibit A. Covered slips are currently rented for $1500.00/year. Open slips are currently rented for $50.00/foot per year, with a minimum charge of 50 feet ($2500).

The current marina operator has the right to remove the marina structures and all of its appurtenances from the current subleased premises. The successful Offeror shall rehabilitate and

improve the existing marina facilities and/or finance, design, and construct new marina facilities that will achieve the requirements of this RFP. At a minimum, the marina facilities shall promote continuity with the existing slip renters and the public by offering an equal number of slips and similar services as currently offered by the existing facility.

Upon award of the Sublease, the successful Offeror shall have sixty (60) days from the date of award to provide professionally-signed drawings and specifications of the proposed new marina facility OR evidence of ownership of the existing marina facility accompanied by professionally-signed drawings and specifications for, at a minimum, the RFP-required improvements to the existing marina facility.

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

If the successful Offeror intends to purchase and/or utilize the existing marina structures, the marina areas that will require improvements, by and at the expense of the successful Offeror, in order for the Sublease to be awarded are:

- The marina store
- The fueling area
- Storage areas
- Electrical infrastructure

All upgrades must be in accordance with local, state, and federal laws, regulations, and current codes, including approval by the Department for Housing, Buildings, and Construction; the Finance and Administration Cabinet; and USACE.

The slip rental agreements for boating season 2021 shall be collected by the successful Offeror, upon award of the Sublease.

V. SUBLEASE AGREEMENT TERMS AND CONDITIONS

A. General

The Sublease between the Commonwealth 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 Sublease shall also be subject to the terms and conditions contained in the Prime Lease. 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 sublease 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 Sublease shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the successful Offeror and the Commonwealth and is incorporated as a written amendment to the Sublease 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 Sublease.

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

B. Description of Property

The Commonwealth proposes to grant to the successful Offeror a portion of the Park shoreline and water area ("Subleased Premises"), with the approximate area shown on Exhibit A, which is attached hereto and expressly made a part hereof, for the purpose of furnishing a first class, high quality marina operation. The Commonwealth holds the Subleased Premises under the USACE Prime Lease. Within sixty (60) days from award of the Sublease, the successful Offeror, at its sole expense, shall submit a preliminary boundary survey of the Subleased Premises, which must be completed by a surveyor registered in the Commonwealth of Kentucky. The Commonwealth must approve the survey in writing prior to its finalization by the surveyor. The final survey documents, once agreed upon by both the Commonwealth and the successful Offeror, will become the official description of the Subleased Premises, as referenced in the RFP and the resulting Sublease.

C. Sublease Subject to Prime Lease

The Sublease between the Commonwealth and the successful Offeror shall be made subject to all rights of USACE under the Prime Lease. All the provisions of the Prime Lease shall be binding upon both the successful Offeror and the Commonwealth. The successful Offeror shall abide by all rules and regulations which may be promulgated by USACE in connection with the use of the Subleased Premises.

D. Sublease Term

The Commonwealth proposes to grant to the successful Offeror a Sublease with an initial term of thirteen (13) years, which commences on January 1, 2021 and terminates on December 31, 2033.

At the end of the initial term, the Commonwealth will entertain an extension of the Sublease for an additional twelve (12) year term, contingent solely upon:

1. The Commonwealth successfully negotiating an extension of the Prime Lease with USACE, and
2. The Commonwealth's determination that the successful Offeror is satisfactorily performing its duties and adhering to the terms and conditions of the Sublease, and
3. Commonwealth and USACE approval of a capital improvement/development plan submitted

by the successful Offeror no later than December 31, 2032, along with a market/feasibility study to support any proposed increase in capacity to the marina facility.

Prior to exercising any extension option, the Commonwealth reserves the right to amend any of the Sublease terms and conditions or allow the Sublease to terminate on December 31, 2033.

E. Purpose

The successful Offeror shall operate as a marina concession and for no purpose other than outlined herein, except as may be authorized by the express prior written consent of the Department of Parks, upon the terms and conditions set forth in the Sublease. The successful Offeror shall, at a minimum, conduct the following business activities:

- Furnishing a facility that provides at least 52 open slips and 116 covered slips for mooring and docking of privately-owned boats
- Rental of boats to the public
- Sale of boat and fishing merchandise, supplies, tackle, and bait
- Sale of gasoline, oil, and other desired petroleum products

The successful Offeror may, at its discretion, also conduct the following business activities:

- Limited incidental sales of boats, motors, and boat accessories
- Servicing of privately-owned boats
- Sale of light refreshments, prepared foods, snacks, sandwiches, and/or grocery items, such as bread, milk, meat, ice, and other related products
- Other related business activities, subject to the prior written approval of the Department of Parks

Light refreshments, prepared foods, sandwiches, and other similar goods may only be offered for sale when the facilities comply with the standards required by the local Department of Health.

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

F. Rental Consideration

As consideration for allowing the successful Offeror to furnish and operate a marina facility on the Subleased Premises, the successful Offeror shall monthly pay to the Department of Parks a percentage of gross receipts derived from operation of the marina concession, boat slip rental, and all other business activities conducted on the Subleased Premises (see page 32 of this RFP).

G. Marina Operation

The marina operation will be perceived by the public as being part of a state park system that enjoys a positive image and reputation. The successful Offeror will be expected to position its marina operation as equal or superior to other Kentucky state park marina operations and offer customer

service that will enhance the total tourism effort of the Commonwealth.

The successful Offeror shall assure that the marina operation provides services to the best standards prevailing for similar businesses and that the marina proper is maintained to a safe standard that complies with all codes, laws, and regulations.

The successful Offeror shall keep the marina facilities open to the public seven days a week during the operating season, and shall obtain preapproval of operating hours from the Department of Parks, which approval shall not be unreasonably withheld. During the off-season, the successful Offeror shall keep the marina open to the public for days and times preapproved by the Department of Parks, which approval shall not be unreasonably withheld.

H. Boat Slip Agreements

The successful Offeror shall annually maintain and keep a dockage license agreement for every slip renter on the Subleased Premises, which shall be a slip rental agreement between the successful Offeror and the boat owner. The agreement shall be updated annually, and a copy of each slip rental agreement shall be provided to the Department of Parks within thirty (30) days of execution. The successful Offeror shall utilize a dockage license agreement similar or identical to the Department of Parks agreement (attached Exhibit D), which form shall hold harmless the Commonwealth and USACE from any negligent acts of the boat owner.

I. Rates and Prices

The successful Offeror shall set reasonable rates and prices for its goods and services. In addition, its rates and prices will be subject to review by USACE and the Department of Parks throughout the entire term of the Sublease. The successful Offeror shall not be permitted to charge for entrance or admission to the concession areas, including that portion, if any, outside of the Project boundaries.

J. Staffing

The successful Offeror shall employ only competent and orderly employees who will keep themselves neat and clean and will accord courteous and competent treatment and service to all guests and patrons. The successful Offeror's employees shall be properly trained in their duties and must be adequate in number and quality to provide prompt, courteous, and efficient service.—The successful Offeror shall issue and enforce an employee uniform policy that has been preapproved by the Department of Parks, which approval shall not be unreasonably withheld.

K. Security

The successful Offeror shall provide suitable security for its entire operation on the Subleased Premises.

L. Utilities

The Commonwealth divests itself of any and all responsibility to all utility service components located on the Subleased Premises, as well as all utility service components located downstream of each marina utility meter. Consequently, the successful Offeror shall, at its sole expense, be responsible for **all** utility service components located on the Subleased Premises and downstream

of each marina utility meter throughout the entire term of the Sublease, including, but not limited to, the following:

1. Provide for and timely pay for **all** utilities for the operation of the marina facility. The existing marina utilities are metered separately from all other Park facilities; utility providers will bill the successful Offeror directly.

2. Pay all costs and obtain all regulatory approvals necessary for utility upgrades, rerouting, provider changes, and any other utility modifications.

3. Ensure adequate domestic and fire safety water service for the entire marina facility. Paintsville Utilities provides water service to the marina facility and will bill the successful Offeror directly. The successful Offeror shall timely pay each monthly bill.

4. Annually certify to the Department of Parks that all water and sanitary systems on the Subleased Premises have been inspected and comply with federal, state, and local standards and regulations. A licensed plumber shall make the certification. Inspectors with the Department of Housing, Buildings, and Construction must perform inspections for permitted repairs and modifications.

5. Certify to the Department of Parks that all electrical components on the Subleased Premises have been inspected and comply with federal, state, and local standards whenever modifications are made or damages occur to the electrical system. Inspectors with the Department of Housing, Buildings, and Construction must perform inspections for permitted repairs and modifications.

   Toilets go into holding tanks on individual boats and are emptied by a pump-a-head boat. Only sanitary waste can be discharged (i.e., no oil, grease, cleaning chemicals, etc.). The pump-a-head boat transfers waste to a stationary pump at the marina. From the marina pump, waste is transferred into the Paintsville Utilities sewer system. Paintsville Utilities will bill the successful Offeror directly. The successful Offeror shall timely pay each monthly bill. In no instance shall waste be discharged into the water.

M. Maintenance Responsibilities

At a minimum, the following property and facilities shall be subject to the maintenance provisions of this Section, to wit: (i) all floating docks, gangways, ramps, piers, slips, and walkways, together with all appurtenances, equipment, utility service components, and signage thereupon; and (ii) all marina buildings, fuel tanks and dispensing systems, maintenance and storage sheds, and any and all other structures.

The Commonwealth divests itself of any and all maintenance to the marina facilities. The successful Offeror shall reasonably maintain the entirety of the Subleased Premises in a manner that provides a safe environment for all patrons and does not detract from or cause ill effect to the overall appearance of the Park.

Consequently, the successful Offeror shall, at its sole expense, be responsible for **all** maintenance

and repair duties throughout the entire term of the Sublease, including, but not limited to, the following:

1. Keep existing and proposed buildings, structures, and other improvements located on the Subleased Premises, both interior and exterior, and all equipment and personal property within and attached to said buildings and structures in good repair, and not suffer or permit any waste to be committed or anything to be done on the Subleased Premises that would constitute a nuisance.

2. Conspicuously post regulatory and other safety signage on the Subleased Premises, such as notifications regarding swimming, stray electrical currents, smoking near fuel, etc.

3. Daily remove trash from the entire Subleased Premises. The successful Offeror shall frequently monitor the Subleased Premises and remove trash on an "as-needed" basis, or as reasonably directed by the Department of Parks or USACE, to maintain a clean and orderly appearance. Trash from the Subleased Premises shall be properly disposed of in a dumpster, the location of which shall be determined by the Department of Parks. The dumpster shall be procured and maintained by and at the sole expense of the successful Offeror, and the successful Offeror shall frequently monitor and remove trash in and around the immediate vicinity of the dumpster on an "as needed" or as reasonably directed by the Department of Parks or the USACE. The successful Offeror shall be responsible, at its sole expense, for emptying the dumpster at least twice per week during operating season and on an "as-needed" basis during the off-season.

4. Provide all janitorial services, cleaning, painting, pest control services, similar services, and all supplies and materials required thereto.

5. Implement a program of preventative equipment maintenance that is in accordance with manufacturer recommendations, and keep detailed records that shall be provided to the Department of Parks upon request.

6. Remove any and all debris that should become lodged within the Subleased Premises, to be completed at the direction of and in conjunction with USACE.

7. Rebuild, restore, and/or replace Commonwealth property necessitated by casualty resulting from the negligence or intentional acts of the successful Offeror, its agents, or its employees.

8. Operate and maintain the gasoline tanks and dispensing systems in compliance with all laws and regulations promulgated by the Energy and Environment Cabinet, Department of Agriculture, and any other applicable local, state, or federal agency. Maintenance of these components includes, but is not limited to, regular inspections, painting, and pumping of sludge and/or water from the tanks (caused by flooding, leaks, or other problems). The successful Offeror shall promptly provide copies of all gasoline tank and dispensing system inspections, documents, and reports to the Department of Parks. The successful Offeror shall also assume all responsibility to repair or replace gasoline tank and dispensing system components, in whole or in part, if necessary or required by a regulating agency. The successful Offeror solely shall be responsible should any gasoline tank or dispensing system component deteriorate to the point of replacement.

9. Park staff shall complete grounds keeping, mowing, and parking lot maintenance at the marina entrance.

N. Maintenance of Commonwealth / USACE Property

In addition to Subsection M, Maintenance Responsibilities, the successful Offeror shall be responsible for the proper care and custody of all Commonwealth / USACE property furnished for successful Offeror's use in connection with the performance of the Sublease. 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, annual inspections of the marina facilities by the Commonwealth's Marina Inspection Team, as described below. Failure to cure deficiencies outlined in the annual inspection report and within the permitted timeframe may result in the Commonwealth implementing default proceedings against the successful Offeror.

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

The successful Offeror shall participate in annual inspections by the Commonwealth's Marina Inspection Team, which may include representatives of the Department of Parks; the Finance and Administration Cabinet; the Department of Housing, Buildings and Construction; the State Fire Marshal's Office; and other appropriate representatives of the Commonwealth. The inspections will determine (1) whether the successful Offeror is in conformity with the provisions of the Sublease, and (2) to specify what act or acts are necessary to conform with the provisions of the Sublease. As soon thereafter as practicable, the Commonwealth shall provide to the successful Offeror a written inspection report detailing the findings and recommendations pertaining to maintenance. The successful Offeror shall have thirty (30) days following receipt of the inspection report to either (1) complete the maintenance recommendations made by the Commonwealth's representatives or (2) present a written plan, for approval by the Commonwealth's representatives, which details the actions to be taken in order to correct any maintenance deficiencies and an anticipated completion date. In the event the successful Offeror fails either to (1) complete the maintenance recommendations within thirty (30) days, or (2) submit a reasonable plan, approved by the Commonwealth, within thirty (30) days, together with a projected date of completion by which to accomplish those maintenance recommendations, and to complete such plan of maintenance as agreed, unless good cause be shown for delay, then the Commonwealth may enter upon the Subleased Premises and do that which is necessary to maintain or repair the property. The successful Offeror shall indemnify and hold harmless the Commonwealth from all costs and expenses of any such maintenance accomplished by the Commonwealth. Should the Commonwealth be required to do that which is necessary to maintain or repair the property, then the Commonwealth may, at its sole discretion, declare the successful Offeror in default of the Sublease.

The successful Offeror shall also submit to inspections by USACE, which may or may not be conducted in conjunction with the Commonwealth's inspections. The successful Offeror shall comply with all inspection requirements and recommendations made by USACE. In the event the successful

Offeror fails to satisfy the USACE inspection requirements, then the Commonwealth may, in consultation with USACE, declare the successful Offeror in default of the agreement.

O. Escrow Account

In order to ensure that the successful Offeror shall be sufficiently liquid to indemnify the Commonwealth against all those costs and expenses that it may incur to maintain and repair the property, the successful Offeror agrees that, throughout the term of the Sublease, the successful Offeror shall deposit in a demand deposit account in a Kentucky bank on the 10th business day of each month, a sum of money equal to two and one-half percent (2-1/2%) of the gross sales of the total marina operation realized for the preceding one month, as reported to the Commonwealth by the successful Offeror, for the purpose of providing to the successful Offeror a working maintenance account with a balance of up to Fifty Thousand Dollars ($50,000). The parties agree with respect to such escrow demand account that:

The successful Offeror may withdraw from the escrow account at any time that funds are available on the condition that the Commissioner of the Department of Parks, or his/her designee, countersigns the check or other instrument to withdraw proceeds from the aforesaid account. The successful Offeror shall be deemed by the resulting Sublease to be authorized to draw from the above account as needed for the reimbursement of maintenance expenses throughout the year, with the prior written approval of the Commissioner of the Department of Parks, or his/her designee. Accompanying each request for reimbursement, the successful Offeror must provide legitimate estimates for repairs and/or maintenance to the facilities with proof of payment to each of the successful Offeror's contractors. In the event funds are withdrawn from the escrow account for maintenance expenses, the successful Offeror shall resume monthly deposits of two and one-half percent (2-1/2%) of the gross sales of the total marina operation realized for the preceding one month, as reported to the Commonwealth by the successful Offeror, until the escrow account balance returns to Fifty Thousand Dollars ($50,000).

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

1. That the account shall be an interest bearing account and that the amounts either deposited in or accruing upon said account shall be considered a cost or an expense of maintaining the subleasehold;

2. That the account shall be maintained jointly in the names of the Commonwealth, Commissioner of the Department of Parks or his/her designate, and the successful Offeror;

3. Withdrawals from the account shall be made only upon the signatures of the representatives of parties, only to reimburse the successful Offeror during each calendar year for those maintenance costs accompanied by verifiable receipts for those maintenance costs, incurred during that year as agreed to by the Commonwealth, which agreement shall not be unreasonably withheld; or to reimburse Commonwealth for maintenance costs incurred as a result of the successful Offeror's failure to perform such maintenance. Refusal by the successful Offeror to authorize a withdrawal from the account to reimburse the Commonwealth for maintenance costs incurred under this section shall constitute a material breach of the sublease agreement;

4. Fund money shall not be utilized to pay salaries, overhead, or operating expenses;

5. That said escrow deposit account, and the requirement for same, shall exist during the entirety of the term of the Sublease and any extensions thereof;

6. That it is the intention of the parties that distributions shall be made from the escrow deposit account for reimbursement to the Commonwealth for all costs and expenses it shall have incurred to maintain or repair the components of the facility at the failure of the successful Offeror to perform such necessary maintenance or repair;

7. At the expiration of the term of the Sublease and any extensions thereto, and after the fulfillment of the requirements of this section, the entirety of the contents of the account shall be returned to the successful Offeror.

P. Promotional Materials and Souvenirs

The successful Offeror shall obtain written approval from the Department of Parks for its proposed promotional materials prior to the publication, dissemination, or broadcast of such materials. Marina promotional materials may incorporate Department of Parks "branding" upon prior written approval by the Department of Parks.

The successful Offeror shall obtain prior written approval from the Department of Parks for souvenirs and other similar materials that it proposes to sell.

Q. Signage

The successful Offeror shall, at its sole expense, be responsible for all marina signage throughout the entire term of the Sublease, including, but not limited to, the following:

1. Install or modify marina promotional sign(s) at appropriate locations, subject to the prior written approval of the Department of Parks. Marina promotional sign(s) shall complement existing Park signage in color and lettering and may incorporate Department of Parks "branding" upon prior written approval by the Department of Parks. Proposed signage along state-maintained highways must also be approved by the Transportation Cabinet prior to installation.

2. Post all signs required by regulatory agencies in conformance with the applicable regulatory requirements.

3. Post signage on the Subleased Premises reflecting that the marina operation is privately owned and operated through an agreement with the Commonwealth.

4. Maintain and repair all aforementioned signs as necessary or reasonably directed by the Department of Parks or USACE.

R. Insurance

Each insurance policy required by this Section shall name the Commonwealth and USACE as additional insured and shall also provide that said policy will not be cancelled, terminated, or changed without at least thirty (30) days prior written notice to the Commonwealth and USACE.

The successful Offeror shall furnish to the Department of Parks copies of the initial certificates of coverage for each policy required by this Section within ten (10) business days of the date that the Sublease is fully executed by all parties, or the date the successful Offeror is granted written permission to begin operation, whichever date is earlier.

In addition, the successful Offeror shall furnish to the Department of Parks renewal certificates of coverage for each policy required by this Section, at least ten (10) business days prior to the expiration of each policy, for the full term of the Sublease and any renewals thereof.

FAILURE TO PROVIDE CERTIFICATES OF COVERAGE ANNUALLY MAY BE GROUNDS TO CLOSE THE MARINA OR PROHIBIT ITS OPENING FOR THE SEASON.

Liability Insurance. During the term of the Sublease, the successful Offeror shall be required to obtain prior to commencement, from a reputable insurance company authorized to do business in the Commonwealth, and obtain and keep in force, at successful Offeror's own expense, a commercial general liability insurance policy providing minimum combined single limits coverage of Five Million Dollars ($5,000,000) per occurrence, and having an aggregate annual limit of not less than Five Million Dollars ($5,000,000), with an umbrella of Five Million Dollars ($5,000,000) per occurrence and an annual aggregate limit of Five Million Dollars ($5,000,000).

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

Casualty Insurance. During the term of the Sublease, the successful Offeror shall maintain, at its sole expense, fire and extended coverage insurance, including theft and vandalism, covering the entire marina facility in an amount equal to its full replacement cost value. The successful Offeror shall also carry and maintain fire and extended coverage insuring all contents and inventories in the Subleased Premises to the extent of their full insurable value. In the event of a loss, the successful Offeror must repair/replace the affected facilities within twelve (12) months from the date of loss.

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

S. Construction/Alterations/Renovations on the Subleased Premises

During the course of the Sublease, the successful Offeror shall not construct, modify, upgrade, alter, renovate, improve, or majorly repair facilities located upon the Subleased Premises, whether owned by the successful Offer, the Commonwealth, or USACE, without prior written approval from the Commonwealth, and USACE (if applicable). The successful Offeror shall comply with the Department of Parks Lessee Property Modification Request procedures, as described in Exhibit E, which is attached hereto and expressly made a part hereof.

The Commonwealth's approval will not be unreasonably withheld. The Commonwealth's approval is not intended to verify constructability or conformance with any applicable codes but rather to ensure that the proposed design meets the successful Offeror's intent and the Sublease requirements. In addition, the successful Offeror, at its sole expense, shall:

1. Agree that proposed construction, modifications, upgrades, alterations, renovations, improvements, and major repairs to the Subleased Premises shall be subject to all applicable building codes of the Commonwealth, the Americans with Disabilities Act (ADA), and the Flotation Requirements, described in Exhibit F, which is attached hereto and

expressly made a part hereof.

2. Allow the Commonwealth to routinely monitor all construction/renovation work performed by the successful Offeror or its agents to ensure that work is being performed in a manner that provides a safe and healthy environment for the public.

3. Obtain all regulatory approvals, building permits, and other necessary approvals prior to commencing construction/renovation activities. In addition to the Commonwealth's approval, the successful Offeror's construction/renovation activities may also require prior approval by USACE and the Department of Housing, Buildings, and Construction. The successful Offeror solely shall determine the necessary approvals and permits and solely shall be responsible to obtain them. The successful Offeror shall be responsible for all fees associated with said approvals and permits. Refer to the Department of Parks Lessee Property Modification Request procedures (Exhibit E) for more detail.

4. Obtain occupancy permits required by law prior to permitting the general public to enter an area of the Subleased Premises that has been constructed, modified, upgraded, altered, renovated, improved, or majorly repaired.

5. Make reasonable attempts to design and construct projects compatible with these goals:
   (a) Increase environmental performance and economic value over time;
   (b) Enhance satisfaction and productivity of workers through energy-efficient systems;
   (c) Incorporate environmentally friendly materials and products; and
   (d) Reduce waste.

T. <u>Performance Bonds</u>

1. For any proposed construction, renovation, alteration or major repair with a total anticipated project cost in excess of $40,000, the successful Offeror or its assignee shall furnish separate performance and payment bonds to the Commonwealth and include USACE as an additional insured. The successful Offeror, or its designee, shall furnish a performance bond satisfactory to the Commonwealth in an amount equal to one hundred percent (100%) of an approved construction project 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 contractors 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.

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.

U. 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 Commonwealth, and where applicable, USACE. In no event shall the successful Offeror extract or remove any minerals, oil, or gas from the Subleased Premises.

V. Records and Reports

The successful Offeror shall keep complete and accurate financial records, pursuant to 304 KAR 1:010, and any and all other applicable laws or regulations, of all transactions relating to the marina facilities and to maintain such additional records as the Commonwealth deems necessary to adequately reflect the operations conducted on the Subleased 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 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.

W. Taxes

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

X. Liens Against the Subleased Premises

Nothing in the resulting Sublease shall in any way be deemed or construed as constituting an order or request by the Commonwealth, expressed or implied, to any contractor, sub-contractor, supplier, materialman, or laborer for the performance of any labor or the furnishing of any materials for the maintenance of any improvements on, alterations to, or other improvements of the Subleased Premises; nor as giving the successful Offeror any right, power, or authority to grant for or permit the rendering of any services or furnishings of any materials that would give rise to the filing of any mechanic's liens against the property of the Commonwealth or USACE or the successful Offeror's sublease-hold interest therein.

Furthermore, the successful Offeror shall not suffer or permit any mechanic's or materialman's lien to be filed against the property of the Commonwealth or USACE, or the successful Offeror's subleasehold interest in the Subleased Premises, by reason of work, labor, services, or materials supplied to or claimed to be supplied to the successful Offeror. If a mechanic's or materialman's lien shall be filed against the Subleased Premises or the successful Offeror's subleasehold interest at any time, the successful Offeror shall cause the same to be discharged within thirty (30) days after the notice of filing thereof by payment, deposit, bond, or an Order of a Court of competent jurisdiction or otherwise. If the successful Offeror, in good faith, disputes the validity or correctness

of any such lien, then it may refrain from paying or causing the same to be discharged of record, but it shall diligently proceed to initiate and conduct appropriate proceedings to determine the correctness or validity of such lien. The successful Offeror shall not be deemed to be in default under the Sublease while such proceedings or litigation are being conducted in good faith by it. However, if the successful Offeror fails to cause any such lien to be discharged within the period aforesaid, or fails to contest the same as provided above, then the successful Offeror shall be deemed to be in default of the Sublease, which shall be a basis for termination of said Sublease.

Y. Sub-Subleasing, Assignments, or Mortgages of Successful Offeror's Interest

During the course of the Sublease, the successful Offeror shall not, with the exception of boat slip agreements relative to the storage and mooring of boats and boating equipment, as specified in Subsection H, voluntarily, involuntarily, or by operation of law, assign, sublet, mortgage, or transfer the Sublease 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 Commonwealth. Any attempt to assign, sublet, mortgage, or transfer the Sublease or any interest created therein without such consent shall be void. If an assignment, sublet, mortgage, or transfer of the Sublease 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 Sublease or from the performance of all other terms, covenants, and conditions of the Sublease. If consent is once given by the Commonwealth to any such assignment, mortgage, or subletting, such consent shall not operate as a waiver of the necessity for obtaining the Commonwealth's consent to any subsequent assignment, mortgage, or subletting. Furthermore, any change in the successful Offeror's business status (i.e., partnership, corporation) shall 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.

Z. Title to Improvements and Additions and Removal of Equipment and Supplies Upon Expiration or Termination of Sublease

1. It is understood and agreed by the parties that the successful Offeror shall have the right, during the term of the resulting Sublease, to erect structures and install equipment in or upon the Subleased Premises, which structures and equipment so placed in or upon or attached to said premises shall be and remain the property of the successful Offeror and may be removed therefrom by the successful Offeror, at its sole expense, at any time prior to any termination or expiration of the Sublease, so long as the successful Offeror has the written approval of the Commonwealth; provided, however, that no structures may be erected upon the Subleased Premises until and unless the design and proposed location thereof have been approved by the Commonwealth and USACE; provided, further, the successful Offeror shall, upon the removal of said structures and equipment, or any part thereof, promptly repair any damage to the Subleased Premises resulting from the installation or removal of said structures and equipment.

2. All structures and equipment of the successful Offeror placed in or upon or attached to the Subleased Premises shall be at the sole risk of the successful Offeror. Nothing herein contained, however, shall be construed to confer any right upon the successful Offeror to construct, operate, or maintain any structure without compliance with requirements of the

Commonwealth and USACE.

3. Structures and equipment not removed from the Subleased Premises within sixty (60) days after any termination, cancellation, or expiration of the resulting Sublease shall become the property of the Commonwealth to dispose of as it determines to be in the interest of the Commonwealth.

AA. Hold Harmless

The successful Offeror shall indemnify and hold harmless the Commonwealth, USACE, 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, USACE, 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 Subleased Premises or any means of ingress thereto, or egress therefrom, or resulting from the successful Offeror's operations on the Subleased Premises, unless such injury or loss arises directly from the negligence of the Commonwealth, USACE, 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 USACE 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.

BB. Attorney's Fees

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

CC. Notices

After Sublease award, all notices under the Sublease 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.

DD. 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 has or will benefit financially or materially from this procurement. Any sublease 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 agents, or employees.

EE. Conflict of Interest

No official or employee of the Commonwealth, and no other public official of the Commonwealth 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 Sublease.

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

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

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

The successful Offeror shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of the Kentucky Worker's Compensation laws and all federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Subleased Premises where the work is being performed. The successful Offeror shall designate a responsible member of his/her organization as safety officer, whose duty shall be to enforce safety regulations. The name and position of the person so designated shall be reported to the Department of Parks within ten (10) business days of the date that the Sublease is fully executed by all parties, or the date the successful Offeror is granted written permission to begin operation, whichever date is earlier.

GG. 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. The successful Offeror shall also abide by all the terms and conditions of the aforementioned Prime Lease, to include but not be limited to, Title VI of the Civil Rights Act of 1964, as amended (2 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 successful Offeror also shall comply with 29 C.F.R. 29, Subtitle A, Part 10 and 29 C.F.R. Part 13 with respect to employee compensation and benefits (See Exhibit G).

The Prime Lease requires the Commonwealth, 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 successful Offerors shall supply like assurance. An assurance will be attached to the resulting Sublease and must be signed by the successful Offeror pursuant to Exhibit B of the Prime Lease.

HH. Permits and Licenses

The successful Offeror shall procure all necessary permits, licenses, and certificates that 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 USACE prior to any re/construction of the marina.

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

II. Right of Entry

The Sublease will reserve the right to the Commonwealth, its officers, agents, and employees, as well as officers, agents, and employees of USACE, to enter upon the Subleased Premises at reasonable times to inspect said premises, operation, and equipment, or for any purposes in connection with work necessary to the benefit of the Commonwealth and the U.S. Government, including, if necessary, any ingress or egress in the form of an easement that shall not unreasonably interfere with the marina operation.

JJ. Termination of Sublease

The Sublease shall be subject to the following termination provisions:

Termination for Default. If at any time during the period in which the Sublease 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 Sublease 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 Subleased 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 period, then the Sublease 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 successful Offeror in immediate default and the 30-day cure provision shall not apply.

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

KK. Procedure on Termination for Default

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 Sublease is terminated and the date upon which such termination becomes effective, the successful Offeror shall stop service under the Sublease 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 the Sublease to be terminated, in which event the Sublease, 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 Sublease 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 successful Offeror 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 the Sublease, and recover from the successful Offeror any deficiency between the amount of rent, additional

rent and all other charges payable under the Sublease, 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.

LL. Force Majeure

The successful Offeror shall not be liable to the Commonwealth if failure to perform the Sublease 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.

MM. Conflict of Law and Choice of Law Provision

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

NN. Level of Assets

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

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

OO. Waiver

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

PP. Disclosure of Financial Information

No official or employee of the Commonwealth and no other public official of the Commonwealth 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 Sublease.

The successful Offeror certifies that by entering into the Sublease resulting from this solicitation with the Commonwealth and that by holding and performing the Sublease, 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 the Sublease, nor will the successful Offeror realize any unlawful benefit or gain directly or indirectly from it. Non-compliance may result in termination of the resulting Sublease.

The successful Offeror, as defined in KRS 45A.030 (10), 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 the resulting Sublease for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records or other evidence provided to the Department of Parks, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the Sublease shall be subject to public disclosure pursuant to *200 KAR 5:314* regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the Sublease. The Secretary of the Finance and Administration Cabinet shall not restrict the public access to any information that would otherwise be subject to public access if a state government agency was providing the service.

QQ. Amendment to Agreement

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

RR. Severability Clause

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

SS. Successors and Assigns

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

TT. Public Use

In accordance with the USACE Prime Lease, 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 Subleased Premises subject, however, to the authority and responsibility of the Commonwealth to manage said premises and provide safety and security to the visiting public.

UU. Cancellation Clause

Subject to the provisions of 200 KAR 5:312, which is hereby incorporated as if fully set forth herein, either party to the resulting Sublease Agreement may cancel said Sublease by giving written notice to the other party, specifying the date of cancellation; such notice to be given not less than thirty (30) days prior to the date of cancellation.

VI. PROPOSAL

A. Evaluation of Proposals

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

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

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

B. Point Scoring of Proposals

The evaluation of proposals will involve the point scoring of each proposal in five (5) areas. A maximum of one hundred (100) points will be available for each proposal as follows:

1. Marina construction or improvement and operational Plan. Minimum required improvement to marina (see Page 8, Section IV)	up to 30 Points
2. Financial background of Offeror and proposed Method of financing Project	up to 20 Points
3. Corporate/business background and experience	up to 10 Points
4. Revenue and percentage of gross receipts to be paid to the Commonwealth	up to 30 Points
5. Offeror's past performance operating a marina of similar size to Paintsville Lake Marina	up to 10 points

The proposal receiving the highest point total will be awarded the Sublease contract.

C. Submission of Proposal

It will be the duty of each Offeror to see that his proposal is delivered by the time and at the place prescribed in this RFP. Proposals received prior to the closing of receipt of proposals will be securely kept, unopened, until the time set for opening proposals. The officer whose duty it is to open them shall decide when the specified time has arrived, and no proposal received thereafter will be considered. No responsibility will attach to an officer for the premature opening of a proposal through inadvertence or one not properly addressed and marked. Telegraphic proposals will not be considered, but modifications by telegraph of proposals already submitted will be considered, if

received prior to the time set for opening the proposals. There will not be a public bid opening.

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

D. Withdrawal of Proposal

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

E. Proposal Subject to These Terms

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

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

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

1. A statement indicating if the Offeror is a corporation, sole proprietorship, or partnership or other legal entity.

2. A statement that the Offeror is registered to do business in Kentucky or will obtain a Kentucky business license, as well as any other documents required by law and the regulations of the Commonwealth prior to commencement of work.

3. A statement from the Offeror, along with evidence from the Kentucky Secretary of State, that the Offeror is in good standing and duly authorized to transact business in Kentucky, as well as certification from the Offeror that the Offeror has verified from each of its proposed subcontractors and suppliers that each is a viable, ongoing business entity, and is capable of performing its obligations to the prime contractors and its subs, and that each has supplied the Offeror (or will supply prior to acceptance of a contract) evidence of "good standing" with the Kentucky Secretary of State.

4. A statement identifying all addenda to the RFP issued by the Commonwealth and received by the Offeror. If no addenda have been received, a statement to that effect should be included.

5. A statement that the Offeror's proposal meets all requirements, provisions, specifications, terms, and conditions set forth in the RFP and sample lease agreement, or in the alternative, an explanation of any deviation from such terms and conditions, specifications, requirements, or provisions. The Commonwealth reserves the right to reject any proposal containing such deviations or as to require modifications before acceptance. [Any deviation from the terms and conditions,

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

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

1. **Marina Operational Plan.** The Offeror shall provide:

1. A general narrative description of the proposed marina operation, including a time schedule, operation date, seasonal opening/closing times, off-season days and opening/closing times, list of personal property inventory (i.e., type of rental boats, etc.), a plan view of the proposed marina facility layout (including slips, sizes, electric, water and cable locations), and itemized cost estimate. For example, indicate the number of rental houseboats, fishing boats, sail boats, jet skis, and etc., including rental fees to be assessed for all categories of boat slips and moorage (i.e., bays, covered and uncovered, and houseboat slips). The Offeror must also indicate the services to be offered, proposed area lighting, proposed area security, proposed promotional plans, signage, employee uniform policy, preventative maintenance schedule, safety equipment replacement schedule, emergency procedures for fire and accidents, and any other information pertinent to the proposed operation of the Offeror's marina facilities.

2. Offeror shall provide comprehensive and detailed specification material relative to all operation, materials, equipment, furnishings, etc. (i.e. make/model of equipment, boats for rental, etc.) for the proposed marina complex that will enable the Commonwealth to determine the quality of these items.

3. Describe management structure/organization proposed for the marina; identify management personnel by name, if selected, titles; and show how management staff will interact with each other in managing the facilities. Additionally, the Offeror is to indicate the number of staff and categories of work to be utilized in operation and maintenance of the facilities (i.e., housekeeping, maintenance, waitress, fuel dispensing operator, cashier, motor repairman, etc.).

4. Provide an initial five-year business plan for operation and development of the Subleased Premises. The plan must show goals and objectives for each year showing the estimated cost of any development.

5. Provide a comprehensive and detailed proposal for either a new marina facility OR planned improvements to the existing marina facility (see minimum requirements – page 8). NOTE: Upon award of the Sublease, the successful Offeror shall have sixty (60) days from the date of award to provide either drawings and specifications of the proposed new marina facility OR evidence of ownership/purchase of the existing marina facility accompanied by drawings and specifications for, at a minimum, the RFP-required improvements to the existing marina facility. All drawings and specifications must be stamped and signed by a registered professional in the Commonwealth of Kentucky.

NOTE: THE OFFEROR SHOULD CAREFULLY COMPLETE ITS RESPONSE TO THE ABOVE

CATEGORY, *AS OFFEROR'S PROPOSAL WILL BE INCORPORATED INTO THE RESULTING SUBLEASE AS A PORTION OF THE OFFEROR'S "LEVEL OF ASSETS"* (SEE SUBSECTION NN – PAGE 25).

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

1. Corporations – Audited Balance Sheet and Income Statement, Cash Flows (prior 5 years), Off-Balance Sheet Liabilities
   Individuals – Tax returns for prior 5 years, FICO credit score from 3 credit bureaus and details (terms of loan) on all outstanding debt.

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

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

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

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

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

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

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

4. Completed required forms: Authentication of Bid and Affadavit of Non-Collusion and Non-conflict of Interest (page 34), Statement of Final Determination of Violations pursuant to KRS 45A.485 (page 36), Sworn Statement Regarding Campaign Finance Laws Pursuant to KRS 45A.110 and KRS 45A.115 (page 37), and Minority Business Enterprises (MBE) Participation (Exhibit H).

DEFINITION OF GROSS RECEIPTS

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

Fees for utilities should be exempt from commission rate.

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

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

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

5. **Revenue Payable to the Commonwealth.** Offerors are to indicate (on line below) the percentage of gross receipts Offeror will pay to the Commonwealth for the term of the corresponding sublease. **Offeror must identify the anticipated, estimated amount of gross receipts derived from the operation of the marina facility for the first five years of the sublease period, with a detailed description of all revenue streams.**

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

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

OFFEROR FILL IN BLANK AND RETURN:

For the sublease and operation of (please check the appropriate box) ☐ the existing marina facility at Paintsville Lake State Park or ☐ a newly-constructed marina facility, I propose to pay the Commonwealth of Kentucky _____% of Gross Receipts per month for revenue earned from Offeror's operation of a marina facility at Paintsville Lake State Park.

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

_____
Offeror's Signature

_____
(Offeror's Name - Printed)

6. Offeror's Past Performance Operating a Marina of similar size to Paintsville Lake Marina

If the Offeror is the existing operator of Paintsville Lake Marina, the Offeror's past performance for the previous five-year period will be reviewed and verified through existing Department of Parks' methods of compliance with terms and conditions of the existing agreement (such as timely receipt of rental; timely receipt of annual audits, timely receipt of insurance certificates, etc.) and by marina inspection reports compiled by the Department of Parks.

If the Offeror is not the existing Paintsville Lake Marina operator, the Offeror shall provide verifiable reports/accounts (from its Lessor[s]) for the previous five-year period, which demonstrates the Offeror's satisfactory performance operating a marina facility similar in size and nature to the Paintsville Lake Marina and under a lease arrangement similar in scope to the terms and conditions of the proposed Sublease resulting from this RFP.

ANNUAL AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS

Affidavit Effective Date: 121020
Affidavit Expiration Date:
Maximum Length One-Year

REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS FOR BIDS AND CONTRACTS IN GENERAL:

I. Each bidder or offeror swears and affirms under penalty of perjury, that to the best of their knowledge:

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.

e. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding, is not currently engaged in, and will not for the duration of the contract engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which Kentucky can enjoy open trade, as defined in KRS 45A.607.

f. The bidder or offeror swears and affirms that the entity bidding, and all subcontractors therein, have not violated any of the prohibitions set forth in KRS 11A.236 during the previous ten (10) years, and further pledge to abide by the restrictions set forth in such statute for the duration of the 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 to the best of their knowledge:

a. In accordance with KRS 121.056, and if this is a non-bid contract, neither the contractor, nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of any contract awarded, have contributed more than the amount specified in KRS 121.150 to the campaign of the gubernatorial slate elected in the election last preceding the date of contract award

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

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

As a duly authorized representative for the bidder, offeror, or contractor, I have fully informed myself regarding the accuracy of all statements made in this affidavit, and acknowledge that the Commonwealth is reasonably relying upon these statements, in making a decision for contract award and any failure to accurately disclose such information may result in contract termination, repayment of funds and other available remedies under law. If the bidder, offeror, or contractor becomes non-compliant with any statements during the affidavit effective period, I will notify the Finance and Administration Cabinet, Office of Procurement Services immediately. I understand that the Commonwealth retains the right to request an updated affidavit at any time.

Signature:_____ Printed Name: _____

Title: _____ Date: _____

Company Name: _____

Address: _____

_____

_____

Commonwealth of Kentucky Vendor Code (if known): _____

Subscribed and sworn to me by: _____ _____
Affiant Title

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

_____ My Commission Expires: _____
Notary Public
(seal of notary)

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

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

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

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

KRS Violation	Date	State Agency

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:

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

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

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

REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS

FOR BIDS AND CONTRACTS IN GENERAL:

I. Each bidder or offeror swears and affirms under penalty of perjury, that:

a. In accordance with KRS 45A.110 and KRS 45A.115, neither the bidder or offeror as defined in KRS 45A.070(6), nor the entity which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth of Kentucky; and the award of a contract to the bidder or offeror or the entity which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

b. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and all subcontractors therein, are aware of the requirements and penalties outlined in KRS 45A.485; have properly disclosed all information required by this statute; and will continue to comply with such requirements for the duration of any contract awarded.

c. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and its affiliates, is duly registered with the Kentucky Department of Revenue to collect and remit the sales and use tax imposed by KRS Chapter 139, and will remain registered for the duration of any contract awarded.

d. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding is not delinquent on any state taxes or fees owed to the Commonwealth of Kentucky and will remain in good standing for the duration of any contract awarded.

e. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding, and all subcontractors therein, are aware of the requirements of Executive Order 2015-370 and will pay all workers working on or in connection with any contract awarded a minimum of $10.10 per hour for all regular, hourly employees and a minimum of $4.90 per hour for all tipped employees for the duration of any contract awarded.

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

II. Each contractor further swears and affirms under penalty of perjury, that:

a. In accordance with KRS 121.056, and if this is a non-bid contract, neither the contractor, nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of any contract awarded, have contributed more than the amount specified in KRS 121.150 to the campaign of the gubernatorial slate elected in the election last preceding the date of contract award.

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

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

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

_____ _____
Signature Printed Name

_____ _____
Title Date

Company Name _____

Address _____

_____

_____

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

of _____ this _____day of _____,20___.
(Company Name)

_____
Notary Public

[seal of notary] My commission expires: _____

EXHIBITS

A. Paintsville Marina Proposed (Aerial) Subleased Area

B. Corps of Engineers Prime Lease Agreement #DACW69-1-84-0144

C. Corps of Engineers Extension Letter

D. Department of Parks Sample Dock Agreement

E. Parks' Lessee Property Modification Request Procedures

F. Floatation Requirements

G. COE 29 C.F.R. 29, Subtitle A, Part 10 and 29 C.F.R. Part 13 with respect to employee compensation and benefits

H. Minority Business Enterprise (MBE) Participation