

(2/14/24)

COMMONWEALTH OF KENTUCKY
FINANCE AND ADMINISTRATION CABINET
DIVISION OF REAL PROPERTIES

REQUEST FOR BIDS (RFB)

FOR LICENSE

KENTUCKY DAM VILLAGE STATE RESORT PARK

Sailboat Rental and Lessons Operation
Administered by the Department of Parks
Marshall County, Kentucky

RFB NO: 03282024

BID OPENS: Thursday, March 28, 2024 @ 3:00 p. m. EST.

INSTRUCTIONS TO BIDDERS

(1) Bid must be submitted on the "Form of Bid" included within and made part of this Invitation, appropriately signed, and received at the Division of Real Properties, State Properties Branch, Bush Building, 3rd Floor, 403 Wapping Street, Frankfort, Kentucky 40601-2607, not later than the specified "bid opening" time and date.

(2) The Commonwealth of Kentucky reserves the unqualified right to reject any or all bids.

(3) Bid form or further information may be obtained Monday-Friday, 8:00 a.m. – 4:30 p.m. EST, by contacting Wendell Harris, Division of Real Properties, at (502) 564-9831 or wendell.harris@ky.gov, State Properties Branch, Division of Real Properties, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601-2607, PH: (502) 782-0373.

(4) Anyone interested in this bid opening may participate in a conference call at the date and time listed above by dialing (502) 782-2663, then entering the participation code 42014.

GENERAL TERMS AND CONDITIONS
INVITATION TO BID
Kentucky Dam Village State Resort Park

Section I
SCOPE OF LICENSE

At the request of the Department of Parks and the Tourism, Arts and Heritage Cabinet, the Division of Real Properties and Finance and Administration Cabinet (collectively referred to as the "Commonwealth") issues this Request for Bids on the license/use of the Department of Parks' property (as shown on the attached **Exhibit A**), for a sailboat rentals and lessons operation at Kentucky Dam Village State Resort Park (KDV).

Bids quoted in response to this Invitation to Bid shall be for a stated monetary sum which the Bidder will pay to the Commonwealth to utilize the property and operate a sailboat rentals and lessons amenity at KDV.

Section II
SITE VISIT

Bidders are urged and expected to inspect the site and to satisfy themselves as to all general and local conditions that may affect the cost of compliance with the agreement, to the extent such information is reasonably obtainable. (IN NO EVENT WILL A FAILURE TO INSPECT THE SITE CONSTITUTE GROUNDS FOR A CLAIM AFTER AWARD OF THE BID).

Note: For further information concerning the exact location and access to the site, please contact: Scot Ratzlaff, Park Manager, KDV, 166 Upper Village Drive, Gilbertsville, KY 42044. Phone: 270-362-4271 or scot.ratzlaff@ky.gov.

Section III
PERFORMANCE

The Successful Bidder will enter into a License Agreement with the Commonwealth to memorialize the use of KDV for a sailboat rentals and lessons amenity at KDV (hereinafter "License Agreement").

The Bidder shall assume responsibility for all costs involved in the operation and maintenance of the property, office/ticket sales area, and ancillary, supporting facilities, including furnishing all equipment, labor, supplies, staff, etc. The Commonwealth will not be liable/responsible for damage or maintenance to the licensed property or the Successful Bidder's personal property located on the licensed premises.

The Bidder shall not engage nor permit their employees to engage in any offensive, injurious, or abusive use of the park premises. All sailing events and services shall be conducted in the highest professional manner that will be a credit to the park. Bidder shall maintain good order at all times and shall keep the park premises used by the Bidder in a clean and sanitary condition throughout

the entire term of the resulting agreement, whether operating or not.

The Bidder agrees and covenants not to engage in any illicit or unlawful business nor to engage in any illicit social relationships with park employees, vendors, performing artists, and park guests or any other entity that would interfere with the business activity contemplated in the License Agreement or impair the public perception of the good image of “the Nation’s finest” park system of the Commonwealth of Kentucky during the term of the resulting license. The Bidder’s failure to perform this term or condition is deemed to be a material breach of the License Agreement.

Inspection: The agents and employees of the Commonwealth shall have the right at all reasonable times during the term of the resulting agreement to inspect the premises, equipment, and personnel, owned, used, or employed by the Bidder in its concession operation at the park.

Prior to initiating any renovation or alteration or construction to the licensed premises, such renovation or alteration or construction must be approved in writing by the Commonwealth. It is the responsibility of the Bidder to submit any proposals for renovation/alteration/construction to the Department of Parks and if approved, the proposal must be approved by the Division of Engineering and Contract Administration/Real Properties within the Finance and Administration Cabinet. The proposal may also need to receive regulatory and permitting approvals through the Department of Housing, Building and Construction/Public Protection Cabinet.

Bidder shall comply with all standards set by the State Fire Marshal’s Office, the Kentucky Occupational Safety and Health Standards Board, and all local, state, or federal laws and regulations.

Such improvements, structures and equipment so placed in or upon or attached to the premises shall remain the property of the Commonwealth, unless the Commonwealth otherwise agrees and unless such improvements, structures, and equipment can be removed without damage to the Commonwealth’s property. Upon the removal of said improvements, structures, and equipment, or any portion thereof, the Bidder shall promptly repair any damage to the licensed premises resulting from the installation or removal of same and return the licensed premises to its original condition, at the Bidder’s sole expense. Structures and equipment not removed from the premises at the termination, cancellation or expiration of the resulting license shall become the property of the Commonwealth, which may, at its sole discretion, assess the Bidder the costs of removal or repair incurred by the Commonwealth as a result of the Bidder’s failure, howsoever caused, to affect the removal or repair required herein.

Nothing in the this bid package or resulting license agreement shall in any way be deemed or construed as constituting an order or request by the Commonwealth, express or implied, to any contractor, subcontractor, supplier, materialman, or laborer, for the construction of any improvements on, alteration to, or other improvements of the licensed premises; nor as giving the Bidder any right, power or authority to contract for or permit the rendering of any services or furnishing of materials that would give rise to the filing of any mechanic liens against the Commonwealth’s property or the Bidder’s license hold interest in the licensed premises by reason of work supplied to the Bidder. If a mechanic’s or materialman’s lien shall be filed against the licensed premises at any time, the Bidder shall immediately notify the Commonwealth in writing of

such lien and shall cause the same to be discharged within thirty (30) days after the notice of filing thereof by payment, deposit, bond, or Order of Court of competent jurisdiction or otherwise. If the Bidder, in good faith, disputes the validity or correctness of any lien, then the Bidder shall immediately notify the Commonwealth in writing of such dispute and may refrain from paying or causing the same to be discharged of record, but the Bidder shall diligently proceed to initiate and conduct appropriate proceedings to determine the correctness or validity of such lien. The Bidder shall not be deemed to be in default under the License Agreement while such proceedings are being conducted in good faith by them. However, if the Bidder fails to cause any such lien to be discharged with the period aforesaid or fails to contest the same as provided above, the Bidder shall be deemed to be in default of the License Agreement, which shall be a basis for termination of said agreement under the "Termination for Default" condition contained herein.

Major deviations from these provisions will not be made without the prior written approval of the Division of Real Properties and the Department of Parks. Problems that arise under any aspect of performance should first be resolved between the Bidder and the Department of Parks. If such problems and/or disagreements cannot be so resolved, either party in writing should refer them to the Division of Real Properties for settlement.

Section IV
HOURS OF OPERATION

Any outdoor, organized program held pursuant to Section V herein shall commence no earlier than 6:00 a.m. and end not later than 9:30 p.m. and the successful Bidder shall be responsible for assuring that all visitors and participants have left the premises by 10:00 p.m., the Park closing time.

Section V
THE LICENSE

Purposes of the License: The purpose of this License is to permit the operation of a sailboat rentals and lessons amenity for public recreation. The Bidder agrees that no person, corporation, or entity shall conduct or engage in any form of trade, business, or other commercial activity, nor perform any type of service for consideration on the licensed premises without the prior written consent of the Department of Parks pursuant to KRS 148.021 and 304 KAR 1:030.

Section VI
METHOD OF AWARD

The license will be awarded for use of the licensed premises, on a highest bid amount to that responsible, responsive Bidder(s) whose offer conforming to this Invitation to Bid will be most advantageous to the Commonwealth. The Commonwealth reserves the right to reject any and all bids and to waive technicalities. The Bidder's past performance shall be a consideration and shall be a factor in the award of the license.

Section VII
LICENSE PERIOD

Upon acceptance of bid, the term of resulting license agreement will be for the period beginning the date of execution of the License Agreement by the Secretary of the Finance and Administration Cabinet and ending on December 31, 2025. At expiration, the license may be extended for five (5) additional one (1) year periods upon written mutual consent of the parties.

The Commonwealth of Kentucky reserves the right to renegotiate any terms and/or conditions for any and all extended period(s). The Bidder shall be advised of any proposed revisions prior to the renewal period. In the event proposed revisions cannot be agreed upon, either party shall have the right to withdraw from either exercising the option or continuing the license in an extended period.

The Bidder's use of the premises and operation of the KDV licensed premises are subject to, and the Bidder shall comply with, all applicable state, local, and federal statutes, and regulations.

Section VIII
RENTAL PAYMENT

As rental under the license, the successful Bidder shall monthly pay to the Commonwealth throughout the time of the Agreement a percentage of all gross revenues from concession sales on the Licensed Premises. All payments due under this Agreement shall be made no later than the tenth day of the following month and mailed to the Park's business office. Registration fees for participants are to remain as reasonable as possible in order to sustain the amenity.

Section IX
CANCELLATION OF LICENSE

The Commonwealth reserves the right to cancel the License Agreement for convenience pursuant to 200 KAR 5:312. A written notice will be given to the Bidder(s) at least thirty (30) days prior to such proposed termination date. Upon the termination date specified in the written notice, all privileges of Bidder shall cease, and Bidder shall no longer be permitted to use park structures or premises and shall remove any personal property of Bidder from premises by the cancellation date.

Upon cancellation of the resulting license, the Bidder shall restore the park premises and structures used in Bidder's operation in as good a condition as of the date the license was entered into by the parties. Reasonable wear and tear and damage by the elements is excepted. Should Bidder not restore the park premises and structures used in Bidder's operation to as good a condition as of the date the license was entered into by the parties, Department of Parks may make such repairs and/or restoration. Bidder will be responsible for reimbursement to the Department of Parks for the cost of such repairs and/or restoration.

Section X
ROUTINE MAINTENANCE, PARK SERVICES AND IMPROVEMENTS

The successful Bidder shall provide an ADA accessible portable restroom, at its sole expense, and in conjunction with the park manager, determine its placement. The successful Bidder shall be solely responsible for maintaining the cleanliness and odor of the portable restroom. Commonwealth shall provide up to eight (8) trash containers and collect trash; provided, however, successful Bidder shall be responsible for assuring that trash is removed on a regular basis and collected in the trash containers. Any additional trash container shall be the responsibility of the successful Bidder. The successful Bidder shall mow the licensed area year-round, as needed, and shall remove debris and trimmings from the park premises and not allow it to accumulate on the licensed premises. The successful Bidder shall also string trim any and all appropriate locations such as trees, fences or any spot that would normally be trimmed. The successful Bidder shall be responsible for all maintenance of the licensed premises in an orderly and clean appearance.

The successful Bidder shall construct, add, operate, or maintain no buildings, facilities, structures, landscaping, etc, of any kind on the premises, except such as are constructed, added, operated, and maintained in accordance with plans and specifications which shall first have received the written approval of the Kentucky Department of Parks. All such buildings, facilities, or structures as may be placed in or upon or attached to the licensed premises shall be and remain the property of the successful Bidder, which may remove such buildings, facilities, or structures, or any thereof, the successful Bidder shall promptly repair any damage to the licensed premises resulting from installation or removal of the same. Structures not removed from the licensed premises at the termination of the License shall become property of the Licensor, which may, at its sole discretion, assess the successful Bidder the reasonable costs of removal or repair herein. All buildings, facilities, or structures of the successful Bidder placed in or upon or attached to the Licensed premises shall be so placed or attached at the sole risk of the said successful Bidder.

Section XI
UTILITIES

The successful Bidder shall be responsible for all payments of all utilities required by its performance or perpetuation of the activity describe in Section V herein.

Section XII
INDEMNITY AND RELEASE

The successful Bidder shall indemnify and save the Commonwealth harmless from any and all claims, demand, damages, actions, costs, and charges to which Commonwealth may be subject or which Commonwealth may have to pay by reason of any injury to any person and/or the agents, officers, and employees thereof or property or loss of life or property resulting from successful Bidder's operation of a sailboat rentals and lessons amenity unless such injury or loss arises solely from the negligence of Commonwealth. The successful Bidder shall, at its own expense, assume the

defense of such claims and actions for damages arising out of such injuries and losses which may be brought against Commonwealth by third persons, and shall carry public liability insurance as set forth in Section XIII. It is understood and agreed that successful Bidder cannot control use of or access to the park and said licensed premises at other times and this indemnity agreement does not apply to injuries to any person or property or loss of life or property at times other than successful Bidder's operation of said sailboat rentals and lessons entity or when due to Commonwealth's negligence. It is understood by the successful Bidder that other organized groups, with the park manager's prior written approval, may use the licensed premises. Park management shall give the successful Bidder thirty days' notice to the successful Bidder of other organized groups' proposed use of the licensed premises. At park management's discretion, these groups may be required to supplement field maintenance.

Each participant in successful Bidder's sailboat rentals and lessons shall sign the "Waiver of Liability" to release and discharge the Commonwealth, KDV and employees and agents of said entities, of any damages, demands or action in any manner. Copies of all "Waiver of Liability" forms shall monthly be submitted to the parks' business office.

Section XIII INSURANCE

The successful Bidder shall carry and maintain public liability insurance, during the term of the License Agreement, in the minimum amounts of \$1,000,000 per person, per accident, and \$2,000,000 per year, and \$100,000 property damage. Said insurance shall name the Commonwealth as an additional insured and shall contain a non-cancellation clause notifying the Commonwealth at least thirty (30) days in advance of any proposed cancellation. Copies of all insurance policies shall be submitted to the Commonwealth annually for review and approval.

Section XIV RECORDS AND INSPECTION

The Bidder shall keep adequate records, books and accounts covering the business operation conducted upon the premises, in such form as the park/department may prescribe, including dates, times, etc. Such records and books of account shall be open for inspection or audit by the agents and employees of the park at all reasonable times. Bidder shall employ an independent audit agency to perform annual audits, when at the discretion of the Commonwealth an audit is required.

The Bidder, as defined by KRS 45A.030(10), agrees that the Finance and Administration Cabinet, the Department of Parks, 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 license for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the Finance and Administration Cabinet, the Department of Parks, the Auditor of Public Accounts, or the Legislative Research Commission, which are directly pertinent to the resulting license shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the

Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior or subsequent to the execution of the license. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information that would otherwise be subject to public release if a state government agency were providing the service.

Section XV
TERMINATION FOR DEFAULT

If at any time during the period in which the resulting License Agreement is in effect, the Bidder defaults on any obligation incurred hereunder, then the Agreement shall be subject to termination by the Commonwealth with no right of recourse remaining in the Bidder. All rights and benefits herein conferred shall be deemed forfeited, and the Bidder covenants that it shall quietly surrender possession of the licensed premises to the Commonwealth, provided however, that before any termination shall occur under this Paragraph, the Bidder shall be given written notice and be allowed thirty (30) days from the date of receipt of such notice in which to cure such noncompliance. If Department of Parks determines that said default or noncompliance is cured within the above time period, then the License Agreement shall remain in full force and effect.

The procedure for termination of the License Agreement under this Paragraph shall be as follows:

- Upon mailing by certified mail to the successful Bidder a Notice of Termination issued pursuant to 200 KAR 5:312, which shall specify (i) the reason(s) for termination of the License Agreement; (ii) the extent to which performance under this License Agreement is to be terminated; and, (iii) the date upon which termination shall become effective;
- The Bidder shall stop performance under the License Agreement on the date indicated and to the extent specified in said "Notice of Termination," unless the default or noncompliance is cured within the time period stated in the notice.
- The rights and remedies of the Commonwealth provided in this Paragraph shall not be exclusive, and are in addition to any other rights and remedies provided by law or in equity.

Section XVI
TAXES

The Bidder shall pay all taxes which may be lawfully imposed by the Commonwealth and its political subdivisions and shall secure and pay for all permits and licenses which may be required by the Commonwealth or a political subdivision.

Section XVII
ASSIGNMENT

The Bidder shall not voluntarily, involuntarily or by operation of law assign, sublet, or otherwise transfer the License Agreement or any interest created therein, to any other person, association, partnership, corporation, or other entity without first obtaining in each and every instance the Commonwealth's prior written consent. Any attempt to assign, sublet, or otherwise transfer the License Agreement, or any interest created therein, without such consent shall be void. If an

assignment, sublet, or transfer is made with the consent of the Commonwealth, then the Bidder shall not be relieved from the performance of all terms, covenants and conditions of the License Agreement. If the Commonwealth to any such assignment, subletting, or transfer once gives consent, such consent shall not operate as a waiver of the necessity for obtaining the Commonwealth's consent to any subsequent assignment, subletting, or transfer. No assignment will be effective or binding against the Commonwealth until such time as the assignee executes an amendment, signed by all parties, reflecting such assignment.

Section XVIII
INDEPENDENT CONTRACTOR STATUS

The Bidder shall be held to be an independent contractor and all persons employed by him/her in the exercise of the privileges granted therein shall be employees, agents, and servants of Bidder only and not the Commonwealth.

Section XIX
MODIFICATIONS/CHANGES

No modification or change of any provision in this bid shall be made, or construed to have been made, except with the prior written agreement of both parties through an amendment to the License Agreement executed by all parties. Memoranda of Understanding and correspondence shall not be construed as amendments to the license.

If any provision of the license is declared or found to be illegal, unenforceable, or void, then both the Park and the Bidder shall be relieved of all obligations arising under such provision. If the remainder of the license is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

Section XX
DEPARTMENT OF PARKS USE OF THE PREMISES

However unlikely, it is understood that the Department of Parks and other organized groups with the park manager's prior approval may use the licensed premises under limited conditions. These events shall be identified in writing by the park manager at least 30 days in advance as to give proper notice to the successful Bidder.

Section XXI
ENTIRE AGREEMENT

This bid package represents the entire agreement between the parties with respect to the subject matter hereof and supercedes all prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof and shall be independent of and have no effect upon any other agreement.

Section XXII
CHOICE OF LAW

The laws of the Commonwealth of Kentucky shall govern this bid and the resulting License Agreement. Any legal proceeding against the Commonwealth or the department regarding this agreement or any resultant agreement shall be brought in Commonwealth of Kentucky administrative or judicial forms. Venue will be in Franklin County, Commonwealth of Kentucky.

In the event that either party deems it necessary to take legal action to enforce any provision of this Agreement, and in the event the park/department prevails, the Bidder agrees to pay all expenses of such action, including attorneys' fees and costs at all states of litigation, as set by the court or hearing officer.

Section XXIII
ADDITIONAL TERMS/CONDITIONS

Additional items/services, terms and/or conditions that come within the scope of the license agreement and are found to be needed by the Commonwealth may be added to the resulting license with the mutual consent of the Bidder and Commonwealth of Kentucky.

SECTION XXIV
Method of Award

A License Agreement will be awarded to responsive and responsible Bidder submitting the bid offering the best value to the Commonwealth. Such bid shall be for the license and operation of for a sailboat rentals and lessons operation at Kentucky Dam Village State Resort Park (KDV). Bids shall be evaluated based on price and experience. The Division of Real Properties reserves the right to reject any and all bids and to waive technicalities. Bidders are instructed to furnish, with the bid proposal, a description of the Bidder's past experience in operating a sailboat rentals and lessons operation and in retail business in general.

Review of bids received	
Criteria	Points Possible
Bid amount - % of gross receipts	50
Experience in sailboat rentals and lessons and in retail business in general *	50
Total Points Possible	100

SECTION XXV

Sailboat Rentals and Lessons Operation and Retail Experience

Bidders are instructed to furnish, with the bid proposal, a detailed description of the Bidder's past experience in for a sailboat rentals and lessons operations and in retail business in general.

***NOTE: THE DEPARTMENT OF PARKS SHALL REVIEW/EVALUATE THE EXPERIENCE PORTION OF ALL SUBMITTED BIDS.**

FORM OF PROPOSAL (SEALED BID)

TO: Finance and Administration Cabinet Department for Facilities and Support Services Division of Real Properties Bush Building, 3rd Floor 403 Wapping Street Frankfort, Kentucky 40601-2607	INVITATION NO. <u>03282024</u> BID OPENING DATE: <u>March 28, 2024</u> BID OPENING TIME: <u>3:00 p.m.</u>
---	---

BID FORM

Subject to the General Terms and Conditions and Authentication Of Bids and Affidavit Of Non-Collusion and Non-Conflict Of Interest, I propose to pay to the Commonwealth of Kentucky the following amount:

For the license/use of the park premises (Exhibit A hereto) for the operation of a sailboat rentals and lessons amenity, located within the KDV, propose to pay the Commonwealth of Kentucky _____ percent of gross receipts derived from concession sales.

My detailed description of experience in sailboat rentals/lessons operations, and in retail business in general, is enclosed.

Minimum bid acceptable bid: 5% of gross receipts.

Prices quoted in this bid package shall remain firm for the initial period of the resulting license. After this time, prices are subject to revision, which may be either increases or decreases. Said revisions may be requested in writing. The requesting party must furnish documented evidence substantiating the validity of the request. The party to whom the request is presented must notify the requesting party of the decision within 30 days after receipt of the request or satisfactory supporting documentation whichever occurs later. In the event the requested revision is refused, the requesting party shall have the right to withdraw from the license, without prejudice. Provided, however, that the Bidder must continue service, at the bid specified price, until a new license can be established (usually about 60 days).



**Required Affidavit for Bidders, Offerors
and Contractors
(KRS 45A.110 & 45A.115)**

Affidavit Effective for One (1) Year from Date of Execution

Instructions: Pursuant to [KRS 45A.110](#) and [45A.115](#), a bidder, offeror, or contractor (“Contractor”) is required to submit a Required Affidavit for Bidders, Offerors, and Contractors to be awarded a contract, or for the renewal of a contract. An authorized representative of the contracting party must complete the attestation below, have the attestation notarized, and return the completed affidavit to the Commonwealth.

Attestation

As a duly authorized representative for the Contractor, I swear and affirm under penalty of perjury, that that the Contractor has not knowingly violated campaign finance laws of the Commonwealth of Kentucky and that the award of a contract will not violate any provision of the campaign finance laws of the Commonwealth. For purposes of this attestation, "Knowingly" means that the bidder or offeror is aware or should have been aware of the existence of a violation. The bidder or offer understands that the Commonwealth retains the right to request an updated affidavit at any time.

Signature

Printed Name

Title

Date

Bidder or Offeror Name: _____

Address: _____

Commonwealth of Kentucky Vendor Code (If known): _____

Subscribed and sworn to before me this ____ day of _____, _____.

State of: _____ Notary: _____

County of: _____ My Commission Expires: _____

EXHIBIT A

