

**ARKANSAS DEPARTMENT OF HUMAN SERVICES
PERFORMANCE BASED CONTRACTING**

Pursuant to Ark. Code Ann. 19-11-1010 et. seq., the selected contractor shall comply with performance-based standards. Following are the performance-based standards that will be a part of the contract and with which the contractor must comply for acceptable performance to occur under the contract.

- I. The contractor must comply with all statutes, regulations, codes, ordinances, and licensure or certification requirements applicable to the contractor or to the contractor's agents and employees and to the subject matter of the contract. Failure to comply shall be deemed unacceptable performance.
- II. Except as otherwise required by law, the contractor agrees to hold the contracting Division/Office harmless and to indemnify the contracting Division/Office for any additional costs of alternatively accomplishing the goals of the contract, as well as any liability, including liability for costs or fees, which the contracting Division/Office may sustain as a result of the contractor's performance or lack of performance.
- III. During the term of the contract, the division/office will complete sufficient performance evaluation(s) to determine if the contractor's performance is acceptable.
- IV. The State **shall** have the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards, and may include the input of the vendor so as to establish standards that are reasonably achievable
- V. The contract program deliverables and performance indicators to be performed by the contractor are:

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Submittal of Required Plans The Contractor shall submit for approval to the Arkansas Department of Human Services (DHS) all required plans within thirty (30) days of contract start: <ul style="list-style-type: none"> a. Implementation and Testing Plan; b. Training and Organizational Change Management Plan; c. Deployment and Support Plan; d. Training Manual; e. Troubleshooting Guide; and f. Web-based Training Module 	<p>The Contractor must maintain one hundred percent (100%) compliance with this item throughout the term of the contract.</p> <p>Training manual and module and Troubleshooting Guide shall be updated yearly or more frequently as necessary to reflect changes in the fingerprinting configuration.</p>	<p>Damages of one percent (1%) per day, per deliverable, for each day that deliverable is late shall be assessed by DHS, calculated using the annual cost for licensing, maintenance, and user & technical support costs.</p>
Testing and Correction of Deficiencies The Contractor shall address and fix all deficiencies identified by both Contractor and DHS during system testing as set forth in IFB.	<p>Deficiencies must be corrected before June 30, 2020.</p> <p>Contractor shall participate in up to two (2) DHS-run Disaster Recovery/Business Continuity Tests each year.</p>	<p>Damages of one percent (1%) per day that deficiencies are not corrected after the go-live date, calculated using the annual cost for licensing, maintenance, and user & technical support costs.</p>
Configuration Delivery The Contractor shall deliver and install fully functioning electronic fingerprint capture/control software and fingerprint scanning devices (collectively called the "Fingerprint Configuration") per the requirements set forth in this IFB and the subsequent contract by June 30, 2020.	<p>One hundred percent (100%) of the forty (40) Implementation Locations identified in the IFB shall have fully functioning Fingerprint Configurations delivered and installed by June 30, 2020.</p> <p>Any additional fingerprint configurations for other DHS locations shall be delivered and installed on a schedule approved by DHS.</p>	<p>Damages of one percent (1%) per day that deficiencies are not corrected after June 30, 2020, calculated using the annual cost for licensing, maintenance, and user and technical support costs.</p>
Training The Contractor shall complete all training activities as defined in the training and Organizational Change Management Plan.	<p>The Contractor shall train all designated DHS staff before June 30, 2020.</p>	<p>Damages of one hundred dollars (\$100.00) per day that the training activities are incomplete past the date agreed upon during contract negotiations shall be assessed by DHS.</p>
Uptime The Contractor shall maintain a system that meets the uptime requirements defined in the IFB.	<p>Uptime must be ninety-nine percent (99.0%) for all sites. Uptime shall be reported on a monthly basis for each site.</p>	<p>Damages of one-half percent (0.5%) per whole percentage point deficiency in uptime requirement, calculated monthly using</p>

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		the annual cost for licensing, maintenance, and user & technical support costs.
Support Contractor shall provide support for contractor-provided components of the Fingerprint Configuration (capture/control software and fingerprint scanning devices) seven (7) days a week, twenty-four (24) hours a day, three hundred sixty-five (365) days a year that meets the response requirements defined in the IFB, Section 2.6.	<p>The Contractor must maintain one hundred percent (100%) compliance with this item throughout the term of the contract.</p> <p>Contractor shall meet response goals as outlined in the Severity Impact table in Section 2.6A4(c) one hundred percent (100%) of the time.</p>	<p>Damages of five hundred dollars (\$500.00) per hour, per support case for any response that exceeds the defined response goal shall be assessed by DHS.</p> <p>Damages of five hundred dollars (\$500.00) per unavailability of support manager shall be assessed by DHS.</p>
Security Breaches The Contractor shall report all security breaches to the Contract Monitor via email and by telephone as required in the IFB.	Notification to Contract Monitor within one (1) business hour of a security breach.	Damages of one thousand dollars (\$1000.00) per business hour for every business hour the Contract Monitor is not notified of a security breach shall be assessed by DHS.
Maintenance 1. The Contactor shall ensure that the Fingerprint Configuration and all sub-components (equipment, hardware, software, etc.) receive regular updates to remain n-1 compliant for non-security related changes within thirty (30) days of official release. 2. The Contactor shall ensure that the Fingerprint Configuration and all sub-components (equipment, hardware, software, etc.) must receive any security related updates within seventy-two (72) hours of official release. 3. The Contractor shall request and receive DHS approval for any planned maintenance or downtime. 4. The Contractor shall maintain a monitoring and alert system to proactively notify DHS whenever there is an issue with the fingerprint configuration. 5. The Contractor shall proactively notify DHS of any changes or events that could affect the	<p>The Contractor must maintain one hundred percent (100%) compliance with this item throughout the term of the contract.</p>	<p>Damages of one hundred dollars (\$100.00) per day, per machine, that is not updated pursuant to the regular updates requirement, shall be assessed by DHS.</p> <p>Damages of five hundred dollars (\$500.00) per day, per machine, that is not updated pursuant to the security-related updates requirement, shall be assessed by DHS.</p>

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<p>operation of the fingerprint configuration.</p> <p>6. The Contractor shall provide a mechanism for user maintenance (add, remove, change users) and shall process all requests within one (1) business day. Business days shall be defined as Monday-Friday, 7:00 a.m. to 6:00 p.m., Central Time, excluding State (Arkansas) approved holidays. The Contractor shall also provide a mechanism for emergency user maintenance requests to be processed within two (2) hours</p>		
<p>Reporting</p> <p>A. Contractor shall submit for DHS approval the following deliverables each month no later than the 15th of the month:</p> <ol style="list-style-type: none"> 1. <u>Billing Report</u> – this report shall provide monthly billing and usage reports, including but not limited to originating agency identification number (ORI), division, user, volume, and any other usage or billing data requested by DHS. 2. <u>Monthly Status Report</u> – this report shall provide status information, including but not limited to uptime information, support calls/tickets with resolution time and detail, planned outage information, any security incident detail, and any other change details that can affected the normal operation of the Fingerprint Configuration. <p>B. The Contractor shall provide recommendations to DHS on how to make the Fingerprint Configuration operate more efficiently and effectively yearly or as needed.</p> <p>C. The Contractor shall comply with any audit or other information requests for information within three (3) business days at the Contractor's cost. Business days shall be defined as Monday-Friday, 7:00 a.m. to 6:00 p.m.,</p>	<p>The Contractor must maintain one hundred percent (100%) compliance with this item throughout the term of the contract.</p>	<p>Damages of one hundred dollars (\$500.00) per day late, per report required in part A of this Service Criteria, shall be assessed by DHS.</p> <p>Damages of one thousand dollars (\$1000.00) per occurrence of vendor's failure to meet parts B, C, or D of this Service Criteria, shall be assessed by DHS.</p>

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Central Time, excluding State (Arkansas) approved holidays.		
<p>Mandated Reporting Pursuant to Ark. Code Ann. §12-18-402 (b)(10) and Ark. Code Ann. §§ 12-12-1708(a)(1)(AA), Contractor and all of its employees, agents, and all Subcontractors and Subcontractor's employees and agents shall immediately make a report to the Child Abuse Hotline or the Adult Maltreatment Hotline (based on type of maltreatment) if Contractor or any of its employees, agents, or Subcontractors' employees and agents, while performing duties under this contract, have reasonable cause to suspect:</p> <ul style="list-style-type: none"> a. That a child has been subjected to child maltreatment; b. Died as a result of child maltreatment; c. Died suddenly and unexpectedly; d. Observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment. <p>or</p> <ul style="list-style-type: none"> e. That an endangered person or an impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term care facility resident maltreatment <p>A privilege or contract shall not prevent a person from reporting maltreatment when he or she is a mandated reporter and required to report under this section.</p> <p>An employer or supervisor of a mandated reporter shall not prohibit an employee or a volunteer from directly reporting maltreatment to the Hotline.</p> <p>An employer or supervisor of a mandated reporter shall not require an employee or a volunteer to obtain permission or notify any person, including an employee or a</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p>	<ol style="list-style-type: none"> 1. For each failure to report, DHS may impose: <ul style="list-style-type: none"> a. A ten percent (10%) penalty, assessed in the following months' payment for each failure to report. The penalty will be calculated from the total payment for the identified month in which the deficiency took place; or b. A one percent (1%) penalty, assessed in the next payment for each failure to report. The penalty will be calculated from the projected total yearly contract amount for the contract, as determined by DHS. DHS may elect to calculate penalties/damages differently per occurrence. 2. In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, requiring a Corrective Action Plan (CAP), withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and contract termination.

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<p>supervisor, before reporting maltreatment to the Hotline. Pursuant to Act 531 of 2019, Ark. Code Ann. §12-18-402 (b)(10) and Ark. Code Ann. §§ 12-12-1708(a)(1)(AA), Contractor and all of its employees, agents, and all Subcontractors and Subcontractor's employees and agents are mandated reporters.</p>		
<p>Conflict of Interest Mitigation During the term of this contract, the Vendor shall comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions. The Vendor shall disclose all actual, apparent, or potential conflicts of interest to the Department of Human Services (DHS) within five (5) days of having knowledge of them. The Vendor shall develop a mitigation plan as requested by DHS which must be approved and accepted by DHS. Any changes to the approved mitigation plan must be approved in advance by DHS.</p>	<p>The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>The Vendor will be fined one thousand dollars (\$1,000) per day for each day past five (5) days for each actual, apparent, or potential conflict of interest it fails to disclose. The Vendor shall be fined ten thousand dollars (\$10,000) for the first failure to comply with the mitigation plan developed by the Vendor and approved by DHS. Each subsequent violation of the mitigation plan shall be twice the amount of the immediately preceding violation fine.</p>
<p>Transition Planning Ninety (90) days prior to the contract end date, the vendor shall submit to DHS a detailed plan for transitioning all contracted services to DHS, or to another vendor selected by DHS to provide the contracted services.</p> <p>The transition plan shall include provisions for the delivery of all proprietary data collected and/or created during the life of the contract to DHS thirty (30) days prior to the contract end date. All proprietary data collected and/or created during the final thirty (30) days of the contract, or any proprietary data not captured in the initial delivery, shall be delivered to DHS no more than fifteen (15) days following the contract end date.</p>	<p>The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>If the Vendor fails to meet the acceptable performance standard, DHS may issue a below standard Vendor Performance Report (VPR) maintained in the vendor file.</p> <p>Final payment may be withheld from the vendor until the all elements of the transition are satisfied as determined by DHS.</p>
<p>Arkansas Freedom of Information Act (Ark. Code Ann. §25-19-101 et seq.):</p>	<p>Contractor shall respond to FOIA requests timely and accurately one</p>	<p>1. For each failure to meet performance standard, DHS may</p>

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<ol style="list-style-type: none"> 1. Contractor shall cooperate with DHS requests for information and documents that DHS requires to fulfil an Arkansas Freedom of Information Act (FOIA) request. 2. Contractor shall timely provide all documents in its possession or control to DHS that match the request made by DHS. 3. Contractor is subject to Arkansas FOIA law pursuant to Ark. Code Ann. §25-19-103(7)(A). 4. Contractor shall timely and accurately respond to FOIA requests made directly to Contractor. See Ark. Code Ann. §25-19-101 et seq. for specific requirements. 	<p>hundred percent (100%) of the time.</p> <p>Contractor shall provide information and documents to DHS upon request in the timeframe specified in the request one hundred percent (100%) of the time. DHS shall have sole determination as to the sufficiency of Contractor's response and provision of documents.</p>	<p>impose:</p> <ol style="list-style-type: none"> a. A ten percent (10%) penalty, assessed in the following months' payment for each failure to report. The penalty will be calculated from the total payment for the identified month in which the deficiency took place; or b. A one percent (1%) penalty, assessed in the next payment for each failure to report. The penalty will be calculated from the projected total yearly contract amount for the contract, as determined by DHS. DHS may elect to calculate penalties/damages differently per occurrence. <p>In addition to the above, Contractor shall be responsible for any penalties, fees, and costs imposed on DHS associated with vendor's failure to timely and accurately provide the requested information and documents.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, requiring a Corrective Action Plan (CAP), withholding payment on future invoices until Vendor is in full compliance,</p>

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		maintaining a below standard Vendor Performance Report (VPR) in the vendor file and contract termination.

Failure to meet the minimum Performance Standards as specified **may** result in the assessment of damages.

In addition to the specific damages listed above, DHS may, based on Vendor's failure to meet Performance Indicators or any other requirement in the Invitation for Bid (IFB), require Vendor to submit a Corrective Action Plan (CAP) within five (5) business days of request, withhold or reduce payments to Vendor, maintain a negative Vendor Performance Report, and/or terminate the contract. Damages may be withheld from invoice payments.

In the event a Performance Standard is not met, the vendor will have the opportunity to defend or respond to, or cure to the satisfaction of the State, the insufficiency. The State **may** waive damages if it determines there were extenuating factors beyond the control of the vendor that hindered the performance of services of it is in the best interest of the State. In these instances, the State **shall** have final determination of the performance acceptability.

Should any compensation be owed to the agency due to the assessment of damages, vendor **shall** follow the direction of the agency regarding the required compensation process.

ⁱ Nothing in this table is intended to set forth all obligations of the Contractor under the contract. These obligations are in addition to any others imposed by the contract and applicable law.

ⁱⁱ The damages set forth are not exclusive and shall in no way exclude or limit any remedies available at law or in equity.