

**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:

Service Criteria ⁱ	Acceptable Performance	Damages for Insufficient Performance ⁱⁱ
Call-ins or Cancellations All call-in(s) or cancellation(s) must be communicated to the nursing scheduler or the nurse on duty a minimum of two (2) hours prior to the start of any required shift. Specifically, for the shifts that start at 6:30 a.m., call-in(s) must be communicated prior to 4:30 a.m.; for shifts that start at 6:30 p.m., call-in(s) must be communicated prior to 4:30 p.m. There will be <u>NO EXCEPTIONS.</u>	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.	1. Call-ins and cancellations less than two (2) hours prior to the beginning of a shift on more than three (3) occasions, and if the agency fails to replace a cancelled employee for a shift on three (3) separate occasions, will result in a below standard Vendor Performance Report (VPR). 2. If a trend is noted whereby a contractor's personnel is consistently late or continues

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		last-minute calls-ins without justification, AHC may cancel the contract.
<p>Response Time Contractor's response time to a staffing request MUST BE TIMELY which is determined, for the purpose of this document, to mean:</p> <ul style="list-style-type: none"> • IMMEDIATE NEED – Fifteen (15) Minutes or Less, • ROUTINE NEED – Thirty (30) Minutes or Less • PROJECTED NEED – Four (4) Hours or Less. <p>NOTE: IMMEDIATE NEED = Crisis, ROUTINE NEED = Next Shift, PROJECTED NEED = Twenty-Four (24) Hours or Greater</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.	<ol style="list-style-type: none"> 1. Failure to adhere to response times as listed will result in a below standard Vendor Performance Report (VPR). 2. Continued failure to adhere to response times may result in cancellation of the contract.
<p>Billing – Invoicing Agency shall provide accurate invoicing on a weekly basis.</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.	<ol style="list-style-type: none"> 1. If accurate invoices are less than ninety-eight percent (98%) of all invoices submitted in a quarter (with the first three (3) months of the contract being the first quarter) there will be damages equal to five percent (5%) of the amount of the inaccurate invoices credited for the quarter.
<p>Certifications/Checks Contractor shall comply with the certification, screening, testing, and all other requirements specified in section 2.3(B) of the IFB.</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.	<ol style="list-style-type: none"> 1. Failure to comply with Service Criteria may result in invoice withholding, invoice reduction, and/or contract termination.
<p>Policy Compliance Agency shall require staffing to adhere to DAABH/AHC required standards of policy and procedure as specified in all federal, state, and departmental and institutional guidelines and regulations.</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.	<ol style="list-style-type: none"> 2. Failure to adhere to Policy Compliance will result in a below standard Vendor Performance Report (VPR). 3. Continued failure to adhere to Policy Compliance may result in cancellation of the contract.
<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,</p>	Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable	<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

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<p>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 supervisor, before reporting maltreatment to the Hotline.</p> <p>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</p>	<p>performance throughout the contract term as determined by DHS.</p>	<p>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</p> <ul style="list-style-type: none"> 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>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.</p>

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employees, agents, and all Subcontractors and Subcontractor's employees and agents are mandated reporters.		
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.	The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.	The Vendor will be fined one thousand dollars (\$1,000) per day for each day past five (5) calendar 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.
Transition Planning Ninety (90) days prior to the contract end date, the vendor shall submit for DHS approval a detailed plan for transitioning all contracted services to DHS, or to another vendor selected by DHS to provide the contracted services.	The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.	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. Final payment may be withheld from the vendor until the all elements of the transition are satisfied as determined by DHS.
Performance Bonding The Contractor shall be required to obtain performance bonds to protect the State's interest as follows: 1. The amount of the performance bonds shall be one hundred percent (100%) of the annual contract price, unless the State determines that a lesser amount would be adequate for the protection of the State.	Acceptable performance is defined as one hundred percent (100%) compliance with Service Criteria at all times throughout the contract term as determined by DHS.	Damages shall be one percent (1%) per day, calculated using the annual contract amount, for each day Vendor fails to meet the Performance Bonding Requirements specified in Service Criteria. In addition, Vendor's continued failure to meet Service Criteria, may result in a below standard Vendor Performance Report (VPR) maintained in the vendor file and contract termination.

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<ol style="list-style-type: none"> 2. The State shall require additional performance bond protection when a contract price is increased or modified. 3. The additional performance bond must be delivered to the Arkansas Department of Human Services Chief Procurement Officer within fourteen (14) calendar days of request. 4. The contractor shall notify the State of any changes, modification, or renewals for the performance bond during the term of the contract. The performance bond documentation must be provided to the State with each required notice. 		<p>Failure to provide is a breach of contract and may result in immediate contract termination.</p>
<p>Arkansas Freedom of Information Act (Ark. Code Ann. §25-19-101 et seq.):</p> <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>Contractor shall respond to FOIA requests timely and accurately one 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>	<ol style="list-style-type: none"> 1. For each failure to meet performance standard, DHS may impose: <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.

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		<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, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and contract termination.</p>

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

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.