

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 Contractor so as to establish standards that are reasonably achievable
- V. The contract program deliverables and performance indicators to be performed by the Contractor are split up into two tables below, one for Design, Development, and Implementation (DDI) Performance Indicators and one for Maintenance & Operations (M&O) Performance Indicators:

Table 1: DDI Performance Indicators

Number	DDI Service Criteria ⁱ	Acceptable Performance	Damages for Insufficient Performance ⁱⁱ
D-1	<p>Critical Severity – Operational Readiness Review.</p> <p>The Future System shall pass all requirements of the ORR to the State's satisfaction in accordance with <u>RFP Section 2.5.6 SOW Section 6.6</u> by a date agreed upon by the Contractor and State.</p>	Pass all aspect of the ORR by the agreed upon date(s). Contractor shall undertake all efforts to remedy any issues identified in the ORR and the ORR will not be considered passed until all aspects of the ORR are passed.	For every one (1) business day past the agreed upon date the Contractor fails to pass any aspect of the ORR, two (2%) shall be deducted from the available payment for this deliverable/milestone.
D-2	<p>Critical Severity – ACF Determination of CCWIS Compliance.</p> <p>The Future System shall receive an ACF determination of CCWIS compliance of 95% or more by a date mutually agreed upon between the State and the Contractor</p>	Obtain ACF determination for the Future System by the agreed upon date.	For every one (1) business day past the agreed upon date the Contractor fails to obtain ACF determination of CCWIS compliance, one (1%) shall be deducted from the available payment for this deliverable/milestone.
D-3	<p>High Severity – Project Schedule.</p> <p>The Contractor shall deliver a Project Schedule compliant with <u>RFP Section 2.5.1.3 SOW Section 6.1.3</u> within thirty (30) calendar days of the Contract Start Date. This Schedule shall be updated on a mutually agreed upon periodicity.</p>	<p>Deliver a Project Schedule compliant with <u>RFP Section 2.5.1.3 6.1.3</u> on or before thirty (30) calendar days after the Contract's start date.</p> <p>Provide an updated Project Schedule on a mutually agreed upon periodicity thereafter (or a notice that no update is required).</p>	For every one (1) business day past the agreed upon date the Contractor fails to deliver a new or updated Project Schedule, two (2%) shall be deducted from the available payment for this deliverable/milestone.
D-4	<p>High Severity - Change Request Response.</p> <p>During the course of DDI, Contractor shall provide a Project Change Request (see <u>RFP Section 2.3.5 SOW Section 4.5</u>) within fifteen (15) days of the request from designated State staff. The Project Change</p>	100% timeliness in responding to Change Requests.	[damage to be negotiated in Contract]

Number	DDI Service Criteria ⁱ	Acceptable Performance	Damages for Insufficient Performance ⁱⁱ
	Request shall include written estimates and design documents for the State's review and approval.		
D-5	Critical Severity – Timeliness of Deliverable Approval To avoid costly delays, all deliverables must be approved according to the baseline schedule.	100% of all deliverables are approved on schedule.	[<i>damage to be negotiated in Contract</i>]
D-6	High Severity – Number of Deliverable Resubmissions The deliverables submitted for review should be to a quality standard that allows for one DCFS review, one update, and approval. The Contractor shall forfeit the Contract payment associated with that deliverable (or pay a damage if no payment is associated) in the event that the State declines to approve that deliverable three times. In other words, the Contractor shall have two submissions in addition to the original submission for the State's approval before there is a financial consequence. In the event the State withholds approval for the third submission, this does not eliminate, alter, abrogate or otherwise change the Contractor's responsibility to submit that deliverable in a manner satisfactory to the State.	Obtain the State's approval for a deliverable requiring State approval before the third submission of that deliverable.	Forfeiture of the associated payment for said deliverable, if applicable. In the event no payment is associated with the deliverable, a damage in the amount of \$2500 for each submission beyond the third until approval is received.

Table 2: M&O Performance Indicators

Number	M&O Service Criteria ⁱⁱⁱ	Acceptable Performance	Damages for Insufficient Performance ^{iv}
M-1	Transition Execution. To avoid costly extensions of existing contracts and/or operational risk, the transition activities will stay on schedule to transition the M&O services prior to Contract expiration. This will be measured against milestones defined in the Disengagement Plan.	100% of all milestones are completed/approved on schedule.	[<i>damage to be negotiated in Contract</i>]
M-2	Availability.	The Future System is	[<i>damage to be</i>

Number	M&O Service Criteria ⁱⁱⁱ	Acceptable Performance	Damages for Insufficient Performance ^{iv}
	The Future System will be available to all users. Availability is defined as all components of the system are running and the users can perform all task supported by the system. Planned uptime is 24X7 excluding DHS approved maintenance windows.	available to all users 99.75% of planned uptime.	<i>negotiated in Contract</i>
M-3	Performance - Average Response Time. The Future System performance will meet end-user expectations to deliver increased customer satisfaction and efficiency gains	Average response time is two (2) seconds (response time from entering command to receiving result).	<i>[damage to be negotiated in Contract]</i>
M-4	Performance - Maximum Response Time. The Future System performance will meet end-user expectations to deliver increased customer satisfaction and efficiency gains	99.5% of transactions are complete (response time from entering command to receiving result) in less than three (3) seconds.	<i>[damage to be negotiated in Contract]</i>
M-5	Critical Incident Restoring of Service (Break/Fix). Critical incidents will be addressed quickly to minimize the business impact of the incident (critical incident is defined as any high severity application issue for which no work around is available and users cannot perform their task).	95% of high severity incidents are fixed within twenty-four (24) hours.	<i>[damage to be negotiated in Contract]</i>
M-6	Security Incidents Response Time. DHS needs to be aware of any security incidents as quickly as possible.	All notifications completed in less than one (1) hour (all notifications shall occur as soon as possible).	<i>[damage to be negotiated in Contract]</i>
M-7	Response to Patches and Fixes. When COTS/software vendors release patches/fixes, the Contractor needs to apply these patches/fixes to the environment.	Prepare the patches to the production environment (aligned with DHS' release process) within thirty (30) days of the vendor's release.	<i>[damage to be negotiated in Contract]</i>
M-8	Response to Patches and Fixes - Critical Security Patches. When COTS/software vendor release critical patches/fixes, the Contractor needs to quickly apply critical patches/fixes to the environment.	Prepare the critical patches to the production environment (aligned with DHS' release process) within five (5) days of the vendor's release.	<i>[damage to be negotiated in Contract]</i>
M-9	DHS Enhancement Request	Proposals/responses	<i>[damage to be</i>

Number	M&O Service Criteria ⁱⁱⁱ	Acceptable Performance	Damages for Insufficient Performance ^{iv}
	Response Time. After DHS decides to enhance the Future System, the Contractor must respond in a timely manner.	(including requirements, cost estimate, and schedule) must be received within fifteen (15) working days.	<i>negotiated in Contract</i>
M-10	Delivery of Enhancements. To avoid scheduling issues and potential end-user issues, all enhancements must be completed in alignment with the proposed schedule.	Enhancements deployed into production on schedule.	<i>[damage to be negotiated in Contract]</i>
M-11	Documentation Updates. When changes are introduced to the system (e.g. new software is deployed) or processes (e.g. personnel changes involved in Disaster Recovery) the documentation (e.g. configuration management process, architecture) must be updated.	Documentation is updated within two (2) weeks.	<i>[damage to be negotiated in Contract]</i>
M-12	Customer Satisfaction Survey - Usability. Customer (internal and external) satisfaction surveys provide insight into the usability of the Future System.	90% of all responses must have a satisfaction score of seven (7) out of ten (10) (or equivalent) or higher (10 being the highest score).	<i>[damage to be negotiated in Contract]</i>
M-13	Customer Satisfaction Survey - Internal Vendor/Partners. Customer (other DHS vendors, DHS management etc.) satisfaction provide insight into whether the Contractor is partnering effectively with other vendors to provide services to DHS and its Clients.	90% of all responses must have a satisfaction score of seven (7) out of ten (10) (or equivalent) or higher (10 being the highest score).	<i>[damage to be negotiated in Contract]</i>
M-14	Disaster Recovery: Recovery Time Objective (RTO) (DHS Optional). DHS needs to recover the production environment in the event of a disaster without lengthy downtime.	The Future System is fully functional at the back-up location within seventy-two (72) hours.	<i>[damage to be negotiated in Contract]</i>
M-15	Disaster Recovery: Recovery Point Objective (RPO) (DHS Optional). DHS needs to minimize the loss of data in the event of a disaster.	No more than twenty-four (24) hours' worth of data collected before the disaster is invoked can be lost (not available once the production environment is restored at the back-up location).	<i>[damage to be negotiated in Contract]</i>
M-16	Conflict of Interest Mitigation	The Contractor must maintain one hundred	The Vendor will be fined one thousand

Number	M&O Service Criteria ⁱⁱⁱ	Acceptable Performance	Damages for Insufficient Performance ^{iv}
	During the term of this contract, the Contractor shall comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions. The Contractor 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 Contractor 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.	percent (100%) compliance with this item at all times throughout the term of the contract.	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.
M-17	<p>Reports. All reports required by the Contractor shall be furnished to the State or Federal Government in accordance with the requirements of the Contract.</p> <p>This standard shall not include Key Federal Reports (defined in SOW <u>Attachment A</u> Section 31.12.1)</p>	The Contractor furnishes all reports as required by the Contract on their due date, notwithstanding the Key Federal Reports.	[damage to be negotiated in Contract]
M-18	<p>Key Federal Reports. The Federal Reports Identified in <u>Attachment A</u> Section 31.12.1 are essential to the State. These reports are the AFCARS, NCANDS, NYTD, Payment History Report, and Family First reporting.</p> <p>A failure by the Contractor or the Future System to support the timely and accurate submission of these reports may have severe consequences for the State.</p>	The Contractor submits all Key Federal Reports on their due dates unless its failure to be submitted is due, in whole or in part, to an act or omission of the Contractor or a failure, issue, defect or characteristic of the Future System.	[damage to be negotiated in Contract]
M-19	<p>Additional Vendor Proposed Performance Indicators.</p> <p>To help the State in managing a more robust performance based contract, vendors are highly encouraged to propose additional Performance Indicators for each of the areas as below. Vendors can add additional rows to this table to include additional</p>	To be proposed by vendors.	[damage to be negotiated in Contract]

Number	M&O Service Criteria ⁱⁱⁱ	Acceptable Performance	Damages for Insufficient Performance ^{iv}
	<p>Performance Indicators. Possible topics include: Platform M&O Transition, Application M&O Requirements, DDI to M&O Transition, Modifications and Enhancements Requirements, M&O Turn-Over Requirements</p> <p>These additional Performance Indicators will be evaluated by the State as part of value added services provided by vendors, during the proposal evaluation and selection process.</p>		

Service Criteria ^v	Acceptable Performance	Damages for Insufficient Performance ^{vi}
<p>Performance Bonding</p> <p>A. The Contractor shall be required to obtain performance bonds to protect the State's interest as follows:</p> <ol style="list-style-type: none"> 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. 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 	<p>Acceptable performance is defined as one hundred percent (100%) compliance with Service Criteria at all times throughout the contract term as determined by DHS.</p>	<p>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.</p> <p>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. Failure to provide is a breach of contract and may result in immediate contract termination.</p>

<p>during the term of the contract. The performance bond documentation must be provided to the State with each required notice.</p>		
<p>B. 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</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>	<ul 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.

<p>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 employees, agents, and all Subcontractors and Subcontractor's employees and agents are mandated reporters.</p>		
<p>Transition Planning</p> <p>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. Final payment may be withheld from the vendor until the all elements of the transition are satisfied as determined by DHS.</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 Contractor 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 Contractor 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, the Contractor **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.

ⁱⁱⁱ 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.

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

^v 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.

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