

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 |
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| <p>A. Glucometer Specifications Vendor must provide twenty-five (25) Clinical Laboratory Improvement Amendment (CLIA) – waived glucose hospital use glucometers and five (5) Clinical Laboratory Improvement Amendment (CLIA) – waived glucose non-hospital use glucometers within two (2) weeks of receipt of initial purchase order.</p> | <p>The Vendor must maintain one hundred percent (100%) compliance with this item.</p> <p>Vendor's hospital-use and non-hospital-use glucometers must use the same test strips.</p> | <p>A three percent (3%) penalty will be assessed to the invoice payment for each day the Vendor is not in full compliance with this requirement.</p> |
| <p>B. Glucose Test Strips Specifications Vendor must provide an annual volume of at least thirty-seven thousand eighty (37,080) strips to be delivered in quarterly shipments.</p> | <p>The Vendor must maintain one hundred percent (100%) compliance with this item.</p> | <p>A three percent (3%) penalty will be assessed to the invoice payment for each day the Vendor is not in full compliance with this requirement.</p> |
| <p>C. Warranty Vendor must provide at least a two (2)-year warranty on all equipment.</p> | <p>The Vendor must maintain one hundred percent (100%) compliance with this item.</p> | <p>DHS reserves the right to impose penalties including without limitation, withholding payment on invoice until Vendor is in full compliance with this standard.</p> <p>A below standard Vendor Performance Report (VPR) may be issued and shall be maintained in Vendor's file.</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.