

**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 <sup>i</sup>	Acceptable Performance	Damages for Insufficient Performance <sup>ii</sup>
<p><b>A. Vendor Staffing</b> Vendor <b>shall</b> provide staffing as agreed upon with the Arkansas Department of Human Services (DHS) for development and support hours of the QuickBase platform used by various divisions and offices within DHS.</p> <p>Staffing <b>shall</b> include:</p> <ul style="list-style-type: none"> <li>• Senior Quick Base Developer</li> <li>• Quick Base Developer</li> <li>• Quick Base Support and Maintenance Specialist</li> <li>• Quick Base Business Analyst</li> <li>• Quick Base Project Manager</li> </ul>	<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 Arkansas Department of Human Services (DHS) may cancel the contract.</p>
<p><b>B. Fixed Price LOE</b> Vendor <b>shall</b> provide a fixed price “Level of Effort” for each request, including all planning, DDI, training and Implementation services when requested by DHS to build or enhance an application. The LOE must include the date at which the LOE will be delivered the client.</p>	<p>The Vendor shall supply a complete LOE within 10 business days of the DHS request. Vendor may request certain requirements information be provided before this period starts.</p>	<p>\$500 for each business day the LOE is late.</p>
<p><b>C. LOE Delivery</b> Vendor <b>shall</b> deliver completed application or enhancement once all parties have agreed, approved, and funded an LOE, by LOE date.</p>	<p>The Vendor shall deliver an approved and tested application or enhancement by the agreed-upon date in the LOE.</p>	<p>\$500 for each business day the LOE Delivery is late.</p>
<p><b>D. Defect/Bug Resolution</b> The Vendor <b>shall</b> resolve all defects or bugs affecting agreed upon delivery of the application or application enhancement in a timely manner.</p>	<p>The Vendor must resolve within 30 calendar days.</p>	<p>\$500 for each business day the Defect Resolution is late.</p>

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<p><b>E. Security Vulnerabilities</b> The Vendor <b>shall</b> provide resolution for any security vulnerabilities found by either party in a timely manner.</p>	<p>The Vendor must resolve security vulnerabilities within 3 business days.</p>	<p>\$500 for each business day the Vulnerability Resolution is late.</p>
<p><b>F. System Updates and Maintenance</b> The Vendor <b>shall</b> provide written notice to the Contract Monitor of any system update or maintenance that requires scheduled downtime. The Vendor agrees that sometimes DHS will require work to be delivered after business hours and agrees to satisfy these requests as required.</p>	<p>A written notice delivered at least fourteen (14) calendar days prior to the planned downtime.</p>	<p>\$300 per day for every calendar day less than fourteen (14) days the Contractor does not provide written notice of planned downtime to the Contract Monitor.</p>
<p><b>G. Security Breaches</b> The Contractor <b>shall</b> report all security breaches to the Contract Monitor in writing and by telephone as required in the IFB.</p>	<p>Notification to Contract Monitor within (1) business hour of a security breach.</p>	<p>\$200 per business hour for every business hour, the Contract Monitor is not notified of a security breach.</p>
<p><b>H. Conflict of Interest Mitigation</b> During the term of this contract, the Contractor <b>shall</b> comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions. The Contractor <b>shall</b> 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 <b>shall</b> develop a mitigation plan 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 Contractor must maintain one hundred percent (100%) compliance with this item 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>

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<p><b>I. Transition Planning</b>  Ninety (90) days prior to the contract end date, the vendor <b>shall</b> 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>
<p><b>J. Mandated Reporting</b>  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 <b>shall</b> 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 that:</p> <ol style="list-style-type: none"> <li>a. A child has been subjected to child maltreatment;</li> <li>b. A child died as a result of child maltreatment;</li> <li>c. A child died suddenly and unexpectedly; or</li> <li>d. Observe a child being subjected to conditions or circumstances that would</li> </ol>	<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"> <li>1. For each failure to report, DHS may impose: <ol style="list-style-type: none"> <li>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</li> <li>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.</li> </ol> </li> </ol> <p>In addition to the above penalties, DHS reserves the right to impose additional</p>

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<p>reasonably result in child maltreatment. or</p> <p>e. 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> <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 employees, agents, and all Subcontractors and Subcontractor's employees and agents are mandated reporters.</p>		<p>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.

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<sup>i</sup> 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.

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