

ARKANSAS DEPARTMENT OF HUMAN SERVICES
PERFORMANCE BASED CONTRACTING

Pursuant to Ark. Code Ann. §19-11-267 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. The damages set forth below are not exclusive and shall in no way exclude or limit any remedies available at law or in equity.
- 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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<p>Quality Assurance (QA)</p>	<p>All solicitation materials are Arkansas DHS specific, consistent, coherent, clear, complete, and accurate including without limitation:</p> <ol style="list-style-type: none"> 1. Formatting, sequence, and numeration. 2. All content is DHS approved and accurately represents Federal and State guidelines where applicable. Excel sheets calculate correctly. 3. All documentation references are consistent. 4. All necessary exhibits, addenda, and attachments are included, including bidder library items. <p>Any discrepancies are the responsibility the Contractor to immediately fix and address.</p>	<p>First remedial action: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>For insufficient performance, the associated milestone will be considered incomplete and milestone payments will be delayed until completion as approved by DHS.</p> <p>In addition to the above, after three (3) incidents of Vendor's failure to satisfy the QA service criteria, damages shall be assessed in the amount of twenty-five-hundred-dollars (\$2,500) for each failure to satisfy the service criteria up to ten (10) instances, at which point the damages shall increase to five thousand dollars (\$5,000) for each incidence of non-compliance to be assessed against the Vendor's applicable milestone payment invoice.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including, without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor's</p>

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		file, and contract termination.
Risk Management	<p>Solicitation produced is consistent with the initial procurement strategy and any changes associated with identified emergent issues impacting project risk.</p> <p>The Contractor provides timely project specific guidance and recommended solicitation revision materials to address emergent issues impacting project risk.</p>	<p>First Remedial Action: A CAP acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>Second Remedial Action: Damages in the amount of five percent (5%) will be assessed against total contract value for each thirty (30) day period the Vendor is not in full compliance with all requirements of this Service Criteria.</p> <p>In addition to the above, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor's file, and contract termination.</p>
Solicitation Drafting Responsibility	<p>The Contractor provides and/or produces recommended solicitation materials as the primary mechanism for drafting solicitations. After the initial procurement strategy has been identified, subject matter experts and program staff interviews are limited to focused, concern-specific items.</p>	<p>First Remedial Action: A CAP acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>Second Remedial Action: For insufficient performance, the associated milestone(s) will be considered incomplete and milestone payments will be delayed until completion as approved by DHS.</p> <p>In addition to the above, after three (3) incidents of Vendor's failure to</p>

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		<p>satisfy the Solicitation Drafting Service Criteria, damages in the amount of five percent (5%) will be assessed against the applicable milestone payment for each additional instance of noncompliance specific to this Service Criteria. The five percent (5%) damages will be calculated from the total milestone payment for each instance of noncompliance within the month in which the deficiency took place.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor's file, and contract termination.</p>
Solicitation Process Responsibility	<p>The Contractor shall bear primary responsibility for conducting the solicitation posting to award processes including without limitation:</p> <ul style="list-style-type: none"> - All questions received from bidders are addressed and posted by the deadline. - Evaluation materials and facilitation successfully complete by the deadline. - Demonstration/Oral Presentation written materials and facilitation successfully complete by the deadline. 	<p>First Remedial Action: A CAP acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>Additional Remedial Action(s): For insufficient performance, the associated milestones will be considered incomplete and milestone payments will be delayed until completion as approved by DHS.</p> <p>After three (3) incidents of Vendor's failure to</p>

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	<ul style="list-style-type: none"> - Provide protest support, if necessary. - Provide negotiation documentation, facilitation, and support as required. - Provide support through contract execution. - Provide additional support including testimony or other responses to legislative inquiries, if necessary. 	<p>satisfy the Solicitation Process Service Criteria, a five percent (5%) penalty will be assessed against the applicable milestone payment for each additional instance of noncompliance specific to this Service Criteria. The five percent (5%) penalty will be calculated from the total milestone payment for each instance of noncompliance within the month in which the deficiency took place.</p> <p>In addition to the above, DHS reserves the right to impose additional damages or other remedial measures, including, without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor's file, and contract termination.</p>
<p>Location, Schedule, and Travel</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> <p>Available to DHS during normal business hours and attend after-hours meetings as scheduled.</p>	<p>First Remedial Action: A CAP acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>Additional Remedial Action(s): For insufficient performance, the associated milestones will be considered incomplete and milestone payments will be delayed until completion as approved by DHS.</p> <p>In addition to the above, after three (3) incidents</p>

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		<p>of Vendor's failure to satisfy this Service Criteria, damages shall be assessed in the amount of twenty-five hundred dollars (\$2,500) for each deficiency up to ten (10) instances, at which point the damages shall increase to five thousand dollars (\$5,000) for each incidence of non-compliance. The damages shall be assessed against the Vendor's applicable milestone payment invoice.</p> <p>In addition to the above, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor's file, and contract termination.</p>
<p>Project Management</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> <p>Adhere to project schedule unless changes are pre-approved by DHS including the completion of all assigned or identified tasks.</p> <p>All deliverables are complete by the agreed upon due dates.</p> <ul style="list-style-type: none"> - Project kick off - Final approved project plan 	<p>Ten percent (10%) of total contract value shall be paid to Vendor if these Service Criteria are completed by the deadline.</p> <p>For insufficient performance, the associated milestones will be considered incomplete and milestone payments will be delayed until completion.</p> <p>If three (3) instances of untimeliness or other instance of noncompliance under</p>

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	<p>including all requirements provided by the deadline.</p>	<p>this Service Criteria occur, a five percent (5%) penalty will be assessed against the applicable milestone payment for each additional instance of noncompliance specific to this Service Criteria during each thirty (30) day period Vendor is not in full compliance. The five percent (5%) penalty will be calculated from the total milestone payment for each instance of untimeliness or other instance of noncompliance within the month in which the deficiency took place.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including, without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor's file, and contract termination.</p>
<p>Reporting</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> <p>Timely and accurate reporting required.</p> <p>Provide activity reports on a regular basis as specified by DHS.</p>	<p>First Remedial Action: A CAP acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>Additional Remedial Action(s): For insufficient performance, the associated milestones will be considered incomplete and milestone payments will be delayed until completion as approved by DHS.</p>

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		<p>After three (3) incidents of Vendor's failure to satisfy this Reporting Service Criteria, damages shall be assessed in the amount of twenty-five hundred dollars (\$2,500) for each failure to satisfy the Service Criteria up to ten (10) instances, at which point the damages shall increase to five thousand dollars (\$5,000) for each incidence of non-compliance. The damages shall be assessed against the Vendor's applicable milestone payment invoice.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including, without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor's file, and contract termination.</p>
<p>Criminal Background Checks</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"> - No staff member on this project have committed any offense in accordance with Ark. Code Ann. §21-15-102. 	<p>First Remedial Action: A CAP acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>Additional Remedial Actions: Damages in the amount of five percent (5%) will be assessed against total contract value for each thirty (30) day period the Vendor is not in full compliance with all requirements of this Service Criteria.</p>

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		<p>In addition to the above penalties, DHS reserves the right to impose additional penalties including, without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor's file, and contract termination.</p>
<p>Privacy and Security</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"> - Disclose any breaches within one (1) business day. - Ensure and maintain compliance with privacy and security. - Use protected health information and/or other confidential information only in a manner necessary to provide services required. - Safeguard the use and disclosure of, and restrict access to, protected health information and/or other confidential information. - Maintain confidentiality and meet any applicable Privacy Act of 1974, Health Insurance Portability and Accountability Act (HIPAA), and Health Information Technology for Economic and Clinical Health (HITECH) Act requirements. 	<p>First Remedial Action: A CAP acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>Additional Remedial Action(s): Damages in the amount of five percent (5%) will be assessed against total contract value for each thirty (30) day period the Vendor is not in full compliance with all requirements of this Service Criteria.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including, without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor's file, and contract termination.</p>
<p>Payment and Invoicing</p>	<p>Acceptable performance is defined as one hundred</p>	<p>First Remedial Action: A CAP acceptable to DHS</p>

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	<p>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"> - Invoices must be submitted for each milestone and supported with detailed information including the number of hours worked, activities complete, and associated costs. 	<p>shall be due to DHS within ten (10) business days of the request.</p> <p>For insufficient submission of invoices, the corresponding milestone payments will be delayed until corrected or other items have been identified as that which needs to be completed to be eligible for payment in accordance with the requirements of the contract as approved by DHS.</p> <p>In addition to the above, DHS reserves the right to impose additional remedial measures including, without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor's file, and contract termination.</p>
<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 that:</p> <ul style="list-style-type: none"> a. A child has been subjected to child maltreatment; b. A child died as a result of child maltreatment; 	<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>	<p>For each failure to report, DHS may impose:</p> <ol style="list-style-type: none"> 1. 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 month in which the deficiency took place; or 2. A one percent (1%) penalty, assessed in the next payment for each failure to report.

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<p>c. A child died suddenly and unexpectedly; or</p> <p>d. Observe a child being subjected to conditions or circumstances that would reasonably result in child maltreatment.</p> <p>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>The penalty will be calculated from the total contract amount, as determined by DHS. DHS may elect to calculate penalties/damages differently per occurrence.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including, without limitation, requiring a CAP, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor's file, and contract termination.</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</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</p>

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<p>changes to the approved mitigation plan must be approved in advance by DHS.</p>		<p>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</p> <p>1) Sixty (60) calendar days prior to the contract end date, the Contractor shall submit for DHS approval, a detailed plan for transitioning all contracted services to DHS, or to another contractor selected by DHS to provide the contracted services. The plan must include, but is not limited to, the following:</p> <ul style="list-style-type: none"> a) Contractor’s proposed approach to the transition, b) Complete and updated system and user documentation, c) List of Contractor’s tasks, subtasks, and schedule for all transition activities, d) Contractor’s organizational chart and staffing matrix, for all staff responsible for transition activities including title, telephone number, and email address, e) Operational tasks and procedures necessary to support ongoing operations during transition, and f) A detailed description of the services required by the new Contractor to complete the transition. <p>2) 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) calendar days prior to the contract end date. DHS must pre-approve the format and delivery method of all proprietary data. All proprietary data collected and/or created during the final thirty (30) business days of the contract, or any</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 VPR to be maintained in the vendor’s file. Final payment may be withheld from the vendor until all elements of the transition are satisfied as determined by DHS. Additional damages may be assessed by DHS in the event Contractor does not provide the State’s data as requested or diverts from the approved transition plan. Damages in the amount of a five percent (5%) penalty will be assessed against total contract value for each thirty (30) day period the Vendor is not in full compliance with all requirements of this Service Criteria.</p>

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<p>proprietary data not captured in the initial delivery, shall be delivered to DHS no more than fifteen (15) business days following the contract end date. DHS reserves the right to request re-submission of any proprietary information deemed unacceptable after the Contractor's initial transfer. All transition activity is included in the contract price.</p> <p>3) The Contractor shall not implement the plan until it has received DHS's written approval of the plan. The Contractor shall take all reasonable action to provide a minimally disruptive turnover.</p> <p>4) The Contractor shall consult with DHS to determine, at the discretion of DHS, whether training for DHS staff shall be provided each contract year.</p> <p>5) Deliverable Acceptance Process: If DHS rejects a deliverable, DHS will give the Contractor a written description of the changes that must be made to the deliverable. This cycle of submission, review, rejection, revision, and resubmission shall be repeated until DHS accepts the deliverable. The Contractor shall be liable for all costs associated with additional work related to deliverables rejected by DHS.</p> <p>6) Ten (10) business days after the completed transition, Contractor must provide DHS with a Transition Results Report documenting the results of each step of the Transition Plan. The transition shall not be considered complete until this document is approved by DHS.</p>		
<p>Arkansas Freedom of Information Act (Ark. Code Ann. §25-19-101 et</p>	<p>Contractor shall respond to FOIA requests timely and</p>	<p>For each failure to meet performance standard,</p>

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<p>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). <p>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. For all FOIA requests received, the Contractor shall also notify DHS of the request at DHS.FOIA@arkansas.gov.</p>	<p>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>	<p>DHS may impose:</p> <p>A ten percent (10%) penalty, assessed in the following months' payment for each failure to report. The penalty will be calculated from the total months' payment in which the deficiency took place; or</p> <p>A one percent (1%) penalty, assessed in the next payment for each failure to report. The penalty will be calculated from the total contract amount, as determined by DHS. DHS may elect to calculate penalties/damages differently per occurrence.</p> <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 CAP, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor's 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.