

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, contractor's agents, employees, and 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 indemnify and hold harmless 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. Any changes or additions to performance standards will be made in good faith following acceptable industry standards and may include the Vendor's input so as to establish reasonably achievable standards.
- V. The contract program deliverables and performance indicators to be performed by the contractor are:

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<p>Staffing</p> <p>Contractor shall provide and maintain adequate staffing to fulfill all contract requirements, including providing additional qualified dietitian(s) if the need arises.</p> <p>Contractor must have a plan in place to prevent disruption to operations/service in the event of inclement weather, emergency, or other unforeseen circumstances.</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>1st Incident: An acceptable Corrective Action Plan (CAP) shall be submitted to DHS within ten (10) business days of the request.</p> <p>2nd Incident: A ten percent (10%) penalty will be assessed in the following months' payment for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The ten percent (10%) penalty will be calculated from the total payment for the month in which the deficiency took place.</p> <p>DHS reserves the right to impose additional penalties including without limitation, 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>
<p>Menu</p> <p>The dietitian shall generate menus based on nutritional recommendations from the National Academy of Sciences. Menu items must be selected and cooked to minimize health hazards, such as food allergies.</p> <ol style="list-style-type: none"> a. The dietitian shall solicit and consider feedback from ASH staff and patients to improve the consumption experience. b. Menu selection shall alternate to prevent meal boredom, including seasonal menu items. <p>Contractor shall work with ASH staff to create a "cost-neutral" menu of meal replacements for special events, such as holiday cookouts. The cost of meal replacements shall not exceed the cost of the regularly served meal.</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>1st Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2nd Incident: A ten percent (10%) penalty will be assessed in the following months' payment for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The ten percent (10%) penalty will be calculated from the total payment for the month in which the deficiency took place.</p> <p>DHS reserves the right to impose additional penalties including without limitation,</p>

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<p>Contractor shall work with ASH staff to develop a menu of items for special occasions, which shall include the items that are available and pricing.</p> <p>Contractor shall provide copies of menus to staff so that the menus can be posted for patients.</p>		<p>withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor file, and contract termination.</p>
<p>Preparation The Contractor must ensure that all meals and snack items meet the standards for cleanliness, safety, quality, and quantity (i.e. portion sizes and servings) set forth by the Arkansas Department of Health, the Food and Drug Administration (FDA), the United States Public Health Service (PHS)—including the Food Code, The Joint Commission, and the Centers for Medicare and Medicaid Services. In the event of any conflict in these standards, the most stringent will apply.</p> <ol style="list-style-type: none"> All persons preparing food shall comply with federal, state, and local health and sanitation codes. In the event of any conflict in these codes, the most stringent will apply. All meals shall comply with the current daily nutrient recommendations established by the National Academy of Sciences, subject to physicians' orders. All food items must be sanitary and free of objectionable odors or signs of deterioration. <p>Contractor shall prepare meals no more than twenty-four (24) hours prior to consumption and under properly controlled temperatures, in accordance with local, state, and federal health standards. Contractor must ensure that meals maintain temperatures until served.</p> <p>The Contractor shall prepare and cook meals in the main kitchen area onsite at ASH. The kitchen area shall be maintained and cleaned in compliance with all applicable local, state, and federal health and safety regulations.</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>1st Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2nd Incident: A ten percent (10%) penalty will be assessed in the following months' payment for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The ten percent (10%) penalty will be calculated from the total payment for the month in which the deficiency took place.</p> <p>DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor file, and contract termination.</p>
<p>Training</p>	<p>Acceptable performance is</p>	<p>1st Incident: An acceptable</p>

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<p>The dietitian must provide quarterly group training sessions—four (4) times a year—to educate patients about healthy nutrition and diet.</p>	<p>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>CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2nd Incident: A ten percent (10%) penalty will be assessed in the following months' payment for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The ten percent (10%) penalty will be calculated from the total payment for the month in which the deficiency took place.</p> <p>DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor file, and contract termination.</p>
<p>Patient Food Service Program</p> <p>Contractor shall provide breakfast, lunch, and dinner with beverages and one (1) snack—seven (7) days a week for ASH patients, unless otherwise prescribed by a doctor.</p> <ol style="list-style-type: none"> a. Food must be served on time according to unit schedule. b. Food shall be handed off to ASH staff for serving to patients. <p>Contractor shall receive and strictly follow physician's dietary orders through the Electronic Health Record (EHR) system upon patient admission and as needed during hospital stay.</p> <p>Contractor shall be responsible for maintaining, cleaning, and sanitizing the dining area in compliance with all applicable local, state, and federal health and safety regulations.</p> <ol style="list-style-type: none"> a. Tabletops must be cleaned with soap and water following each meal. b. Food particles and beverage spills must be cleaned following each meal. 	<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>1st Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2nd Incident: A ten percent (10%) penalty will be assessed in the following months' payment for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The ten percent (10%) penalty will be calculated from the total payment for the month in which the deficiency took place.</p> <p>DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor</p>

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<p>c. Spills causing a potential safety hazard must be guarded to prevent an accident and cleaned as soon as possible.</p>		<p>file, and contract termination.</p>
<p>Canteen Food Service Program</p> <p>Contractor shall prepare meals for breakfast, lunch, and dinner seven (7) days a week for purchase by staff, visitors, and occasionally patients.</p> <p>The Contractor shall be responsible for maintaining, cleaning, and sanitizing the dining area in compliance with all applicable local, state, and federal health and safety regulations.</p> <ol style="list-style-type: none"> a. Tabletops must be cleaned with soap and water following each meal. b. Food particles and beverage spills must be cleaned following each meal. c. Spills causing a potential safety hazard must be guarded to prevent an accident and cleaned as soon as possible. 	<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>1st Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2nd Incident: A ten percent (10%) penalty will be assessed in the following months' payment for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The ten percent (10%) penalty will be calculated from the total payment for the month in which the deficiency took place.</p> <p>DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor file, and contract termination.</p>
<p>Special Events and Special Occasions</p> <p>The Contractor shall provide food and food products—including meals, snacks, tableware, and/or condiments, etc.—for special occasions as requested by applicable departments, after approval from ASH.</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>1st Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2nd Incident: A ten percent (10%) penalty will be assessed in the following months' payment for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The ten percent (10%) penalty will be calculated from the total payment for the month in which the deficiency took place.</p> <p>DHS reserves the right to impose additional penalties including without limitation,</p>

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		withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor file, and contract termination.
<p>Mandated Reporting Pursuant to Ark. Code Ann. §§ 12-18-402 (b)(10) and 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; c. A child died suddenly and unexpectedly; or d. Observe 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. 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</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>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. The penalty will be calculated from the projected total yearly contract amount, as determined by DHS. DHS may elect to calculate penalties/damages differently per occurrence. <p>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 file, and contract termination.</p>

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<p>to the Hotline.</p> <p>Pursuant to Act 531 of 2019, Ark. Code Ann. §§ 12-18-402(b)(10) and 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>Conflict of Interest Mitigation Vendor shall comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions. Vendor shall disclose all actual, apparent, or potential conflicts of interest to DHS within five (5) days of having knowledge of them. 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.</p>	<p>Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>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. Vendor shall be fined ten thousand dollars (\$10,000) for the first failure to comply with the mitigation plan developed by 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 Ninety (90) days prior to the contract end date, 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>Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>If Vendor fails to meet the acceptable performance standard, DHS may issue a below standard VPR maintained in the vendor file. Final payment may be withheld until all elements of the transition are satisfied as determined by DHS.</p>
<p>Arkansas Freedom of Information Act (FOIA) (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 fulfill a FOIA request. 2. Contractor shall timely provide all 	<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</p>	<p>For each failure to meet performance standard, DHS may impose:</p> <ol style="list-style-type: none"> a. A ten percent (10%) penalty, assessed in the following months' payment for each failure

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<p>documents in its possession or control to DHS that match the request made by DHS.</p> <p>3. Contractor is subject to Arkansas FOIA law pursuant to Ark. Code Ann. § 25-19-103(7)(A).</p> <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, Contractor shall also notify DHS of the request at DHS.FOIA@arkansas.gov.</p>	<p>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>to report. The penalty will be calculated from the total payment for the month in which the deficiency took place; or</p> <p>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, as determined by DHS. DHS may elect to calculate penalties/damages differently per occurrence.</p> <p>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>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 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, Vendor will have the opportunity to defend, respond to, or cure the insufficiency to the State's satisfaction. The State **may** waive damages if it determines there were extenuating factors beyond vendor's control that hindered the performance of services of it is in the State's best interest. 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 Contractor under the contract. These obligations are in addition to any others imposed by the contract and applicable law.

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