

**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:

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<p>A. Administrative Requirements</p> <ol style="list-style-type: none"> 1. The Contractor shall provide and publish (advertise) to all providers a toll-free inquiry line to be utilized by Arkansas Medicaid and ARKids First program providers. Live voice response and hours of operation shall be 8:00 a.m. thru 4:30 p.m. Central Standard Time (CST), Monday thru Friday, excluding holidays. The Contractor must submit, at a minimum, the name of a contact person for provider inquiries. The average time for satisfying provider inquiries shall be within one (1) business day. 2. The Contractor must verify vision coverage eligibility on each recipient prior to completing the order. Eligibility may be checked using the fiscal agent's billing software or through the Arkansas Medicaid website. The Contractor shall be responsible for eligibility verification fees. 3. The Contractor shall ensure that all eligibility information is confidentially and securely maintained in conformity with applicable state and federal requirements, and the safety and security of all information, data, and procedures is protected in the performance of the contract. All hardware and software used to support operations shall comply with the Health Insurance Portability and Accountability Act (HIPAA). 4. The Contractor must identify and track each job by the appropriate Medicaid or ARKids First (ARKids) Program recipient number of the individual who is to wear the product. The Contractor must respond to the State of Arkansas provider within one (1) working day regarding the status of any Medicaid job if furnished the appropriate Medicaid recipient number. The Contractor must also provide the expected delivery date of a job requested and reasons for any delays in excess of ten (10) working 	<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: A Corrective Action Plan (CAP) acceptable to DHS 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 to the provider for each thirty (30) day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>3rd incident: 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 terminating the contract.</p>

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<p>days after the receipt of the order.</p> <p>5. The Contractor must accept orders either directly from the Arkansas Medicaid or ARKids provider or the State staff. The Contractor must install an automated system to prevent processing of duplicate orders. The system must be in place beginning the effective date of the contract.</p> <p>6. The Contractor must submit an electronic monthly report to the Office of Visual Care Program Manager or his/her designee no later than the fifth (5th) working day of the following month. At a minimum, the report must list Medicaid and ARKids Program separately and contain the following:</p> <ul style="list-style-type: none"> a. Number of orders received b. Number of orders completed c. Number of orders pending by category <ul style="list-style-type: none"> I. One (1) to ten (10) working days II. Ten (10) to twenty (20) working days III. Over twenty (20) working days from receipt of order d. Number of each frame style filled e. Total cost to Arkansas Division of Medical Services of completed orders f. Year-to-date total orders completed g. Year-to-date total costs to Division of Medical Services (DMS) Office of Visual Care h. Number and type of lenses filled i. Average costs per finished set of glasses <p>7. The Contractor must provide the Division of Medical Services, Office of Visual Care, a toll-free telephone number, e-mail address, and a contact person to research inquiries. This must be the same information as specified in item 1 above.</p>		

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<p>8. The Contractor shall complete ninety percent (90%) of all submitted work within ten (10) working days of receipt of an order. This will be computed on a quarterly basis.</p> <p>9. The Contractor shall give the Arkansas Division of Medical Services, Office of Visual Care, written notification weekly regarding the reasons for all orders not completed within ten (10) working days of the receipt of the order.</p>		
<p>B. Prescription Specifications</p> <p>1. <u>Lenses</u></p> <p>a. The Contractor must meet the tolerance level for prescription requirements established by the American National Standards Institute Recommendations for Prescription Ophthalmic Lenses.</p> <p>b. All prices must be per lens, including the Aspheric Cataract Lens.</p> <p>c. Prices must include Federal Drug Administration Services heat treatment and/or chemical hardening of all lenses.</p> <p>d. Balanced lenses, when ordered, must be billed on a reduced pricing schedule.</p> <p>e. The Contractor must provide plastic or polycarbonate lenses.</p> <p>2. <u>Frames</u></p> <p>a. If, during the term of the contract, any frame(s) listed in the contract are to be discontinued by the manufacturers, the Contractor shall substitute another frame(s) of equal or better quality at the same price as the discontinued frame(s), subject to approval by the Division of Medical Services, Vision Consultant or Designee.</p> <p>b. Frames must be size 58 or smaller.</p> <p>c. No frame substitutions shall be permitted without prior approval from the prescribing doctor. This includes type, color, size, etc.</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: A Corrective Action Plan (CAP) acceptable to DHS 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 to the provider for each thirty (30) day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>3rd incident: 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 terminating the contract.</p>

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<p>d. The final determination to discontinue or add new frames during the contract period shall be made by the Division of Medical Services, Vision Consultant or designee.</p> <p>e. The Division of Medical Services may require the Contractor to offer new frames to replace underutilized or poor performing frames.</p> <p>f. The Contractor shall provide an itemized list of all the frames that were purchased during each year of the contract.</p> <p>g. The colors of plastic frames shall be a function of the base materials, and shall not be applied by coatings or finishes applied to the base materials.</p> <p>h. Surfaces of the frames shall be smooth and bright, without nicks, cuts, scratches, seams, ridges, dull or grayish areas.</p> <p>i. Children's frames must have spring hinge temples.</p> <p>j. Frames shall not cause deleterious effects on human skin; this requirement shall be met by the properties of the base material. Exterior coatings or finishes on plastic frames are not acceptable.</p> <p>3. <u>Soft Cases</u></p> <p>a. All cases shall be free of names, lettering, and advertisement of any kind.</p> <p>b. Carrying cases shall be soft-sided vinyl over foam cushioning without clips.</p> <p>c. The sizes offered shall make it possible to select a case that is large enough to completely enclose each frame and fit snug enough so that when held with the opening face down the glasses do not fall out of the case but are easily removable from the case by children and the elderly.</p>		

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<p>4. <u>Hard Cases</u></p> <p>a. All cases shall be free of names, lettering, and advertisement of any kind.</p> <p>b. Carrying cases shall be hard plastic, tubular or clamshell type, and available in a minimum of five (5) assorted colors.</p> <p>5. <u>Frame Repair</u></p> <p>a. Defective frames provided by the Contractor shall be repaired or replaced by the Contractor during the contract period and for a six (6) month time period after the expiration of the contract.</p> <p>b. The Contractor shall exchange temple lengths if necessary, based upon availability of matching temples.</p> <p>c. The Contractor shall provide a procedure and necessary postage to providers for the returning of defective or damaged eyeglasses (e.g., prepaid envelopes, postage, return labels, etc.).</p> <p>d. The Contractor shall provide an annual report on all remakes and repairs required to fix broken frames.</p> <p>6. <u>Completed Eyeglasses</u></p> <p>a. The Contractor shall be responsible for all shipping and handling required to ship all eyeglasses, lenses, frames, and related articles to providers upon completion by the lab. No additional charges shall be allowed beyond contract prices.</p> <p>b. Any improperly made eyeglasses (i.e., incorrect prescription strength, lenses, frames, etc.) must be replaced at the Contractor's expense.</p> <p>c. All completed eyeglasses must be shipped to the provider along with a cleaning cloth and a carrying case for eyeglass storage.</p>		

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<p>d. The Contractor shall inspect materials with strict adherence to ANSI Z80.1 (latest version) standard and correct any issues prior to shipping. Successful delivery must also include proper packaging to ensure no damage occurs in transit and the correct material is shipped within the specified period.</p>		
<p>C. General Requirements</p> <ol style="list-style-type: none"> 1. The Contractor shall identify sales tax on the claim form and code the tax as specified by the Division of Medical Services. 2. All claims for payment by the Contractor must be billed on claim forms specified the Division of Medical Services and in accordance with instructions issued by the Division of Medical Services for completion. The Contractor shall pay any claim processing fee. 3. The Contractor shall supply the most recent catalog of all frame options and all updates as necessary. 	<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: A Corrective Action Plan (CAP) acceptable to DHS 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 to the provider for each thirty (30) day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>3rd incident: 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 terminating the contract.</p> <p>Throughout the term of the contract, vision service providers may communicate unsolicited reports on the general</p>

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		<p>quality of the products and services provided by the vision services lab/contract awardee. The Division of Medical Services or designee reserves the right to have any contracted frame replaced at the contract price when reports from vision services providers exceed five (5) within a six (6) month period about any specific frame.</p>
<p>D. 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> <ol 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. or 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</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 identified 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 for the contract, as determined by DHS. DHS may elect to calculate penalties/damages differently per occurrence. <p>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)</p>

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<p>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>in the vendor file and contract termination.</p>
<p>E. Conflict of Interest Mitigation</p> <p>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) business 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 changes to the approved mitigation plan must be approved in advance by DHS.</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 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>F. Transition Planning</p> <p>Ninety (90) calendar 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</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>

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<p>initial delivery, shall be delivered to DHS no more than fifteen (15) days following the contract end date. Data must be provided to DHS in a DHS-approved format.</p>		
<p>G. Arkansas Freedom of Information Act (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 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.</p>	<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 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>	<ol style="list-style-type: none"> 1. For each failure to meet performance standard, DHS may impose: <ol 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. <p>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</p>

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

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.