

**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>A. Pick-Up/Delivery</p> <p>Pick-up of materials <b>shall</b> only be permitted if the Contractor's facility is within the twenty-five (25) mile radius of ASH and ASH agrees to the pick-up condition. All materials <b>must</b> be available for pick-up or delivery within seventy-two (72) hours after receipt of order. If the materials cannot be made available for pick-up or delivered within seventy-two (72) hours, the Contractor <b>must</b> notify ASH and provide an estimated pick-up or delivery date in writing. This notification <b>must</b> come within twenty-four (24) hours after the order has been placed. Orders placed with the Contractor <b>shall</b> not be held for the purpose of bulk ordering, quantity discounts or to obtain discounted shipping fees. Contractor <b>must</b> accept returns free of charges or fees. Restocking fees are not permitted.</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 five percent (5%) 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 five percent (5%) penalty will be calculated from the total payment for the identified 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 Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<p>B. Codes And Standards</p> <p>1. Hardware</p> <p>All materials furnished <b>shall</b> comply with ADA requirements and <b>shall</b> be clearly marked with the approved hardware schedule.</p> <p>2. Warranty</p> <p>Standard manufacturer warranty for all items. Warranty <b>shall</b> cover defects in material and workmanship and <b>shall</b> cover all costs associated with the repair or replacement of defective items including labor, parts, transportation costs, travel time and expense and any other costs associated with such repair or replacement.</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 five percent (5%) 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</p>

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<p>C. DHS reserves the right to request additional hardware.</p>		<p>contract. The five percent (5%) penalty will be calculated from the total payment for the identified 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 Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<p><u>DELIVERY: FREIGHT ON BOARD (FOB) DESTINATION</u></p> <p>A. Deliveries <b>must</b> be made to the following:</p> <p>ARKANSAS STATE HOSPITAL 305 SOUTH PALM SHIPPING &amp; RECEIVING DOCK LITTLE ROCK, AR 72205</p> <p>B. The agency requires delivery within thirty (30) calendar days after receipt of the order. If this delivery date cannot be met, the Prospective Contractor <b>must</b> state the alternate number of days required to begin the service and/or place the commodity in the DHS' designated location. (See Official Bid Price Sheet.) Failure to state the alternate delivery time obligates the Contractor to complete delivery by DHS' requested date. Extended delivery dates may be considered when in the best interest of the State. The delivery schedule <b>shall</b> be Monday-Friday between the hours of 7:00am -3:00pm CDT. DHS will notify the Contractor twenty-four (24) hours in advance if changes are made to the stated time frame. If the Contractor is located within twenty-five (25) miles of ASH DHS reserves the right to pick up items.</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 five percent (5%) 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 five percent (5%) penalty will be calculated from the total payment for the identified 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</p>

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<p>C. All deliveries <b>must</b> be made during normal state work hours and within the agreed upon number of days unless otherwise arranged and coordinated with the agency. The Contractor <b>shall</b> give the agency immediate notice of any anticipated delays or plant shutdowns that will affect the delivery requirement.</p> <p>D. Loss or damage that occurs during shipping, prior to the order being received by the agency, is the Contractor's responsibility. All orders <b>must</b> be properly packaged to prevent damage during shipping.</p> <p>E. DHS assumes no liability for commodities produced, processed, or shipped in excess of the amount specified on the purchase order.</p>		<p>standard Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<p><b>FREIGHT CHARGE INFORMATION</b> The prices offered <b>must</b> be the delivered price to DHS. The Contractor <b>shall</b> be responsible for delivery expenses incurred with all transportation and handling charges paid by the Contractor(s).</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 five percent (5%) 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 five percent (5%) penalty will be calculated from the total payment for the identified 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 Vendor Performance Report</p>

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		(VPR) in the vendor file and contract termination.
<p><b><u>ORDERS</u></b>  Orders place with the Contractor <b>shall</b> not be held for the purpose of bulk ordering, quantity discounts, and/or to obtain discounted shipping fees. Contractor <b>must</b> accept returns free of charges or fees. Restocking fees are not permitted.</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 five percent (5%) 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 five percent (5%) penalty will be calculated from the total payment for the identified 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 Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<p><b><u>QUALITY</u></b>  All products <b>must</b> be first class quality. The delivered commodity <b>shall</b> be new, not used or refurbished, and <b>shall</b> be of good quality as to the workmanship and material used. All products <b>must</b> be packaged to arrive in an undamaged and unsoiled condition. Any products received</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 five percent</p>

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<p>that do not meet these criteria will be returned and <b>must</b> be replaced by the Contractor at no additional cost.</p>		<p>(5%) 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 five percent (5%) penalty will be calculated from the total payment for the identified 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 Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<p><b><u>BRAND</u></b> All products <b>must</b> be Best Lock © brand. Contractor <b>shall</b> furnish the product according to brand names, manufacturing numbers, and parts as specified on the Official Bid Price Sheet. No substitutions are permitted without prior written approval of DHS.</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 five percent (5%) 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 five percent (5%) penalty will be calculated from the total payment for the identified 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</p>

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		<p>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 file and contract termination.</p>
<p><b>DAMAGES/SHORTAGES</b>  Contractor <b>must</b> replace any nonconforming commodities and supplement any shortages identified upon inspection by the State within ten (10) business days following notice the nonconformance. Contractor <b>shall</b> be responsible for the cost of any transportation and handling of additional commodities and the cost of any retrieval, return, or disposal of the nonconforming commodities.</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 five percent (5%) 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 five percent (5%) penalty will be calculated from the total payment for the identified 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 Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<p><b>INSPECTION</b>  All commodities furnished <b>shall</b> be subject to inspection and acceptance after delivery. The State's right to inspect may be exercised at any reasonable place and time and in any reasonable manner, as determined in the State's reasonable discretion, prior to acceptance of and</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 five percent</p>

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<p>payment for any such commodities. Payment for commodities will not constitute acceptance of the Commodities as conforming if the State has not had a reasonable opportunity to inspect the Commodities or in the event of Contractor's fraud or concealment of defects. Should defects in the material or workmanship be discovered, the State reserves the right to reject further delivery/deliveries, require replacement or cancel the order(s) and charge the vendor for any expense incurred by the cancellation of the order(s) or in securing satisfactory replacement.</p>		<p>(5%) 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 five percent (5%) penalty will be calculated from the total payment for the identified 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 Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<p><b><u>PRICE CHANGE CLAUSE</u></b> All bid prices shall remain firm for the entire contract. In the event of an industry wide price increase for the items quoted in this CB the Contractor may request a price adjustment, provided the Contractor submits documentation from the manufacturer certifying/justifying the increased cost. After receipt of required documentation and in the event a price change is authorized thereafter, said prices will remain firm for any period agreed upon. In the event of a general price decrease, the State shall be guaranteed full benefit of the price reduction for all undelivered purchase orders on the effective date of the decrease and thereafter.</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 five percent (5%) 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 five percent (5%) penalty will be calculated from the total payment for the identified 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</p>



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		<p>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 file and contract termination.</p>
<p><b>ACCEPTANCE STANDARDS</b>  Inspection and acceptance/rejection of product(s) will be made within thirty (30) days of receipt. The State has the option to return any product(s) within the thirty (30) day timeframe for any reason. Bid must include a “total satisfaction” return policy for all products and <b>must not</b> impose any liability on the State for such returns.</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 five percent (5%) 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 five percent (5%) penalty will be calculated from the total payment for the identified 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 Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<p><b>A. 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 shall immediately make a report to the Child Abuse Hotline</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout</p>	<p>For each failure to report, DHS may impose:</p> <ol style="list-style-type: none"> <li>1. A ten percent (10%) penalty, assessed in the following months’ payment for each failure to report. The penalty</li> </ol>

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<p>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 child has been subjected to child maltreatment;</li> <li>A child died as a result of child maltreatment;</li> <li>A child died suddenly and unexpectedly; or</li> <li>Observe a child being subjected to conditions or circumstances that would reasonably result in child maltreatment.</li> </ol> <p>or</p> <ol style="list-style-type: none"> <li>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.</li> </ol> <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 contract term as determined by DHS.</p>	<p>will be calculated from the total payment for the identified month in which the deficiency took place; or</p> <ol style="list-style-type: none"> <li>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> <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) in the vendor file and contract termination.</p>
<p><b>B. Conflict of Interest Mitigation</b> During the term of this contract, the</p>	<p>The Vendor must maintain one hundred percent (100%)</p>	<p>The Vendor will be fined one thousand dollars (\$1,000)</p>

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<p>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 changes to the approved mitigation plan must be approved in advance by DHS.</p>	<p>compliance with this item at all times throughout the term of the contract.</p>	<p>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><b>C. Transition Planning</b> Ninety (90) 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 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>E. Arkansas Freedom of Information Act (Ark. Code Ann. §25-19-101 et seq.):</b></p> <ol style="list-style-type: none"> <li>Contractor shall cooperate with DHS requests for information and documents that DHS requires to fulfil an Arkansas Freedom of Information Act (FOIA) request.</li> <li>Contractor shall timely provide all documents in its possession or control to DHS that match the request made by DHS.</li> <li>Contractor is subject to Arkansas FOIA law pursuant to Ark. Code Ann. §25-19-103(7)(A).</li> </ol> <p>Contractor shall timely and accurately</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</p>	<ol style="list-style-type: none"> <li>For each failure to meet performance standard, DHS may impose: <ol style="list-style-type: none"> <li>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> </ol> </li> </ol>

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<p>respond to FOIA requests made directly to Contractor. See Ark. Code Ann. §25-19-101 et seq. for specific requirements.</p>	<p>Contractor's response and provision of documents.</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 for the contract, as determined by DHS.</p> <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 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>

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.