

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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| A. Security and Privacy Assessments | | |
| 1. The Security and Privacy Assessment Plan (SAP) must be submitted to DHS within 14 calendar days from the start of an assessment. | 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. | 1st Incident: A Corrective Action Plan, acceptable to AR DHS, shall be due to AR DHS within ten (10) business days of the report's due date. |
| 2. The Contractor shall complete the Security and Privacy Control Assessment (SCA) within 120 calendar days of the module assessment begin date. | | 2nd incident: A twenty percent (20%) penalty shall be assessed for Insufficient Performance. The twenty percent (20%) penalty shall be calculated from the total payment for the identified month in which the deficiency took place and assessed in a future months' payment to the Contractor. |
| 3. The Contractor shall schedule and facilitate a walkthrough of the Security and Privacy Assessment Report (SAR) findings within 90 calendar days of module assessment begin date and shall submit the final SAR within 120 calendar days of the module assessment begin date. The SAR content must contain, at minimum, the requirements listed in the RFP. | | 3rd incident: Up to one hundred percent (100%) penalty shall be assessed for Insufficient Performance. The one hundred percent (100%) penalty shall be calculated from the total payment for the identified month in which the deficiency took place and assessed in a future months' payment to the Contractor. |
| 4. The Contractor shall submit a | | In addition to above, DHS reserves the |

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| <p>Plan of Action & Milestones (POA&M) document within 120 calendar days after each module assessment begin date (to be delivered with the SAR and SAW).</p> <p>5. The Contractor shall submit a Security and Privacy Assessment Workbook (SAW) within 120 calendar days after each module assessment begin date.</p> <p>6. The Contractor shall schedule and facilitate a walkthrough of the Penetration Testing Results Report within 90 calendar days of module assessment begin date and shall submit the Penetration Testing Results Report within 120 calendar days after each module assessment begin date. If performing standalone penetration testing, the Penetration Testing Results Report shall be submitted within 30 calendar days after testing start date.</p> <p>7. While assessments are underway, the Contractor shall provide Weekly Status Reports. If multiple assessments are underway simultaneously, the reports may be combined into one. Reports must contain the minimum requirements listed in Section 2.10(D) and any additional information requested by DHS.</p> | | <p>right to impose additional penalties, including but not limited to withholding payment on future invoices until Contractor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the Contractor file, and contract termination.</p> |
| B. Organization and Staffing | | |
| <p>1. The Contractor shall identify and maintain a complete set of all Key Personnel positions. The State must approve all individuals in Key Personnel positions, which are listed in Attachment A.</p> <p>1. The Contractor shall provide Key Personnel in functional, management-level positions to provide daily support and coordination of the staff that perform contract functions and responsibilities; inclusive of (but not limited to) deliverables, performance, services, 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. Temporary replacements must be in place within fourteen (14) calendar days of the date position becomes vacant.</p> <p>A permanent replacement must be approved by the</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>Unless otherwise approved by DHS, the following damages may be imposed for Insufficient Performance:</p> <p>2nd incident:</p> <ol style="list-style-type: none"> Five hundred dollars (\$500) penalty will be assessed for each business day over fourteen (14) calendar days for failure to fill a vacant position |

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| <p>analytics, maintenance, and operations of the currently implemented solution and as defined under the scope of the Contract arising out of this RFP. The Contractor shall manage Key Personnel in accordance with the following: Each must be a full-time, equivalent position for the life of each assessment, as needed.</p> <ol style="list-style-type: none"> Each must meet minimum State approved qualifications, as set forth in Attachment A Each position is subject to the minimum notice of vacancy/replacement of days. Each position may not remain vacant for more than fourteen (14) calendar days (at least a temporary replacement must be in place within two weeks) or held on a temporary/replacement basis for more than ninety (90) calendar days, in a one-year period Each individual selected to fill a Key Personnel Position is subject to State review and approval for assignment and/or replacement. Additional Key Personnel positions may be recommended and/or proposed to the State by the Contractor; any such request must include documents that provide detailed justification for the addition(s), describe general responsibilities, and propose minimum qualifications and salary. | <p>State and filled within ninety (90) calendar days of the date the position becomes vacant.</p> <p>No position may be filled with a temporary appointee for more than ninety (90) calendar days in any one (1) year period.</p> | <p>with a temporary replacement.</p> <ol style="list-style-type: none"> Five hundred dollars (\$500) penalty will be assessed for each business day a key position is filled by a person for these services without state approval. One thousand dollars (\$1,000) per business day for each day over ninety (90) calendar days, for failure to fill a vacant key position with a permanent replacement. <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Contractor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the contractor file and contract termination.</p> |
| Mandated Reporting | | |
| <p>Mandated Reporting</p> <p>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</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> <p>Up to a ten percent (10%) penalty per day for each failure to report may be assessed at DHS' sole discretion. The penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>DHS may elect to calculate penalties/damages differently per occurrence.</p> |

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| <p>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. 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 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 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 Contractor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the contractor file and contract termination.</p> |
| Performance Bonding | | |

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| <p>Performance Bonding 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. <p>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> | <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 Contractor fails to meet the Performance Bonding Requirements specified in Service Criteria.</p> <p>In addition, Contractor's continued failure to meet Service Criteria, may result in a below standard Vendor Performance Report (VPR) maintained in the contractor file and contract termination.</p> <p>Failure to provide is a breach of contract and may result in immediate contract termination.</p> |
| Conflict of Interest Mitigation | | |
| <p>Conflict of Interest Mitigation During the term of this contract, the Contractor shall comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions. The Contractor 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 Contractor 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 Contractor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p> | <p>The Contractor 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 Contractor shall be fined ten thousand dollars (\$10,000) for the first failure to comply with the mitigation plan developed by the Contractor and approved by DHS. Each subsequent violation of the mitigation plan shall be twice the amount of the immediately preceding violation fine.</p> |
| Transition Planning | | |
| <p>1) Ninety (90) calendar days prior to the contract end date, the Contractor shall submit for DHS approval, a detailed plan for transitioning all contracted</p> | <p>The Contractor must maintain one hundred percent (100%) compliance with this item</p> | <p>If the Contractor fails to meet the acceptable performance standard, DHS may issue a below standard Vendor Performance Report (VPR) maintained in</p> |

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| <p>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 schedules 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) All transition activity shall be included in the contract price. DHS must pre-approve the format and delivery method of all proprietary data. The transition plan shall include:</p> <ul style="list-style-type: none"> a) 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. b) All proprietary data collected and/or created during the final thirty (30) business days of the contract, or any 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. c) DHS reserves the right to request re-submission of any proprietary information deemed unacceptable after the Contractor's initial transfer. <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>at all times throughout the term of the contract.</p> | <p>the contractor file. Final payment may be withheld from the contractor until all elements of the transition are satisfied as determined by DHS.</p> |

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| <p>4) 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>5) 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> | | |
| Arkansas Freedom of Information Act (Ark. Code Ann. §25-19-101 et seq.) | | |
| <p>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. For all FOIA requests received, the Contractor shall also notify DHS of the request at DHS.FOIA@arkansas.gov.</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. Up to a ten percent (10%) penalty per day for each failure to timely and accurately provide the requested information and documents may be assessed at DHS sole discretion. The penalty will be calculated using the total payment for the identified month in which the deficiency took place. <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 contractor'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 Contractor is in full compliance, maintaining a below</p> |

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| | | standard Vendor Performance Report (VPR) in the contractor file and contract termination. |

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 Contractor 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 Contractor 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, the Contractor **shall** follow the direction of the agency regarding the required compensation process.

¹ 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.

¹ The damages set forth are not exclusive and shall in no way exclude or limit any remedies available at law or in equity.