

**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 which with contractor must comply for acceptable performance to occur under the contract.

- I. Contractor must comply with all statutes, regulations, codes, ordinances, licensure, and certification requirements applicable to contractor, contractor's agents, employees, and the contract subject matter. Failure to comply shall be deemed unacceptable performance.
- II. Except as otherwise required by law, 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 contractor's performance or lack of performance.
- III. During the contract term, the Division/Office will complete sufficient performance evaluations to determine if 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 contract term, 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 vendor's input so as to establish reasonably achievable standards.
- V. The contract program deliverables and performance indicators to be performed by contractor are:

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<p><b>Facility and Staff</b></p> <p>Contractor shall provide all staff and labor required to ensure janitorial services are met to fulfill contract requirements.</p> <p>Contractor must notify the County Administrator immediately (within twenty-four (24) hours at the latest) of any updates or anticipated delays that will affect the service requirement.</p> <p>Contractor's staff must take reasonable precautions to prevent anyone (except emergency responders) from entering the service location after 4:30 p.m. CT on business days for any reason.</p> <p>Immediately report to DHS all situations having the potential to cause an emergency, such as those brought about by Contractor's staff, defective plumbing, unlocked doors, and fire hazards. Report all emergencies in progress directly to 911.</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p> <ul style="list-style-type: none"> <li>• Contractor's staff adhere to established safety and security protocols</li> <li>• No unauthorized use of State Property</li> <li>• No smoking except in designated smoking area(s)</li> <li>• No visitors or children in the facility while providing janitorial services</li> <li>• No weaponry, including firearms in the facility</li> </ul>	<p>1<sup>st</sup> Incident (not applicable to weaponry and firearms): An acceptable Corrective Action Plan (CAP) shall be due to DHS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident (not applicable to weaponry and firearms): Contractor shall reimburse the State for the monetary value of any unauthorized use.</p> <p>A five percent (5%) penalty will be assessed in the following months' payment to Vendor for each thirty (30) day period Vendor is not compliant with all contract requirements. The five percent (5%) penalty will be calculated from the total months' payment 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 compliant, maintaining a below standard Vendor Performance Report (VPR) in the vendor file, and contract termination.</p>
<p><b>Supplies</b></p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p> <ul style="list-style-type: none"> <li>• Contractor will provide all equipment, cleaning supplies, and tools</li> <li>• Contractor will use cleaning products with little</li> </ul>	<p>1<sup>st</sup> Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: A five percent (5%) penalty will be assessed in the following months' payment to Vendor for each thirty (30) day period Vendor is not compliant with all contract requirements. The five percent (5%) penalty will be calculated from the total months' payment in which</p>

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	<p>or no odor, fumes, fragrance, or perfumes</p>	<p>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 compliant, maintaining a below standard VPR in the vendor file, and contract termination.</p>
<p><b>Schedule</b></p> <p>Services are provided five days per week (Monday, Tuesday, Wednesday, and Thursday) after normal business hours and either Friday, Saturday, or Sunday.</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p> <ul style="list-style-type: none"> <li>Respond to emergencies within two (2) hours of request.</li> <li>Receive written approval from County Administrator prior to making any variation in schedule or janitorial services.</li> </ul>	<p>1<sup>st</sup> Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: A five percent (5%) penalty will be assessed in the following months' payment to Vendor for each thirty (30) day period Vendor is not compliant with all contract requirements. The five percent (5%) penalty will be calculated from the total months' payment 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 compliant, maintaining a below standard VPR in the vendor file, and contract termination.</p>
<p><b>Cleaning Requirements</b></p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p> <ul style="list-style-type: none"> <li>Provide all daily, weekly, monthly, quarterly, semi-annual, and annual janitorial services as</li> </ul>	<p>1<sup>st</sup> Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: A five percent (5%) penalty will be assessed in the following months' payment to Vendor for each thirty (30) day period Vendor is not compliant with all contract requirements. The five percent (5%) penalty will be</p>

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	<p>specified or requested by DHS.</p>	<p>calculated from the total months' payment 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 compliant, maintaining a below standard VPR in the vendor file, and contract termination.</p>
<p><b>Quality Requirements</b></p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p> <ul style="list-style-type: none"> <li>Contractor shall provide quality service to the satisfaction of DHS.</li> </ul>	<p>1<sup>st</sup> Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: A five percent (5%) penalty will be assessed in the following months' payment to Vendor for each thirty (30) day period Vendor is not compliant with all contract requirements. The five percent (5%) penalty will be calculated from the total months' payment 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 compliant, maintaining a below standard VPR in the vendor file, and contract termination.</p>
<p><b>Loss, Damage, and/or Destruction of Property</b></p> <p>Contractor shall be responsible for any loss, damage, and/or destruction to the State's property and the property of others due to the actions of Contractor's and/or subcontractor's staff.</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p> <ul style="list-style-type: none"> <li>Repair, correct, replace, or bring to the same condition</li> </ul>	<p>1<sup>st</sup> Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: Contractor will reimburse DHS within seven (7) business days for all loss, damage, and/or destruction to State property. Contractor will reimburse DHS for the monetary value,</p>

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	<p>prior to cleaning all damage resulting from misused products or from the use of products not recommended for locations being serviced.</p> <ul style="list-style-type: none"> <li>Take reasonable measures and precautions to prevent unauthorized use, pilferage, or removal of items from State property.</li> </ul>	<p>as determined by DHS' phone bills or other documented evidence of unauthorized use, pilferage, or removal of items belonging to the State, common areas, and/or tenant's offices.</p> <p>DHS reserves the right to impose additional penalties including, without limitation, withholding payment on future invoices until Vendor is compliant, maintaining a below standard VPR in the vendor file, and contract termination.</p>
<p><b>Mandated Reporting</b> Pursuant to Ark. Code Ann. §§ 12-18-402 (b)(10) and 12-12-1708(a)(1)(AA), Contractor and all 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 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</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"> <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 months' payment in which the deficiency took place; or</li> <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, as determined by DHS.</li> </ol> <p>DHS may elect to calculate penalties/damages differently per occurrence.</p> <p>DHS reserves the right to impose additional penalties including without limitation, requiring a CAP, withholding payment on future invoices until Vendor is compliant, maintaining a below standard VPR in the vendor file, and contract termination.</p>

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<p>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 12-12-1708(a)(1)(AA), Contractor and its employees, agents, and all Subcontractors and Subcontractor's employees and agents are mandated reporters.</p>		
<p><b>Conflict of Interest Mitigation</b></p> <p>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 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) for each actual, apparent, or potential conflict of interest it fails to disclose.</p> <p>Vendor shall be fined ten thousand dollars (\$10,000) for the first failure to comply with the mitigation plan approved by DHS. Each subsequent violation of the mitigation plan shall be twice the amount of the immediately preceding violation fine.</p>
<p><b>Transition Planning</b></p> <p>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.</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</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 from vendor until all elements of the transition are satisfied as determined by DHS.</p>

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<p>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><b>Arkansas Freedom of Information Act (FOIA) (Ark. Code Ann. §25-19-101 et seq.):</b></p> <p>Contractor shall cooperate with DHS requests for information and documents that DHS requires to fulfil a FOIA request.</p> <p>Contractor shall timely provide all documents in its possession or control to DHS that match the request made by DHS.</p> <p>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 <a href="mailto:DHS.FOIA@arkansas.gov">DHS.FOIA@arkansas.gov</a>.</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>	<p>For each failure to meet the performance standard, DHS may impose:</p> <ul style="list-style-type: none"> <li>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</li> <li>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.</li> </ul> <p>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 compliant, 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 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 vendor that hindered the performance of services if 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.