



**STATE OF ARKANSAS**  
Department of Human Services  
Office of Procurement  
for  
Division of Children and Family Services  
700 Main Street  
Little Rock, Arkansas 72203

**REQUEST FOR QUALIFICATION**  
**BID SOLICITATION DOCUMENT**

<b>SOLICITATION INFORMATION</b>			
Bid Number:	DCFS-18-1001	Solicitation Issued:	2/21/2017
Description:	Private Licensed Placement Agencies		
Agency:	Dept. of Human Services, Office of Procurement for Div. of Children and Family Services		
<b>SUBMISSION DEADLINE FOR RESPONSE</b>			
Bid Opening Date:	March 17, 2017	Bid Opening Time:	2:00 p.m. Central Time
<p>Responses <b>shall not</b> be accepted after the designated bid opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of vendors to submit responses at the designated location on or before the bid opening date and time. Responses received after the designated bid opening date and time <b>shall</b> be considered late and <b>shall</b> be returned to the vendor without further review. It is not necessary to return "no bids" to OSP.</p>			
<b>DELIVERY OF RESPONSE DOCUMENTS</b>			
Delivery Address:	<div style="display: flex; justify-content: space-between;"><div style="width: 45%;">Responses may be delivered to: Arkansas Department of Human Services Office of Procurement 700 West Main Street, Little Rock, AR 72201</div><div style="width: 10%; text-align: center;">OR</div><div style="width: 45%;">Mailed by Commercial mail to: Arkansas Department of Human Services Office of Procurement Attn: Margurite Al-Uqdah 112 W. 8<sup>th</sup> Street, Slot W304 Little Rock, AR 72201</div></div> <div style="margin-top: 10px;">OR Mailed by United States mail to: Arkansas Department of Human Services Office of Procurement Attn: Margurite Al-Uqdah 700 West Main Street, Slot W304 Little Rock, AR 72201</div>		
Response's Outer Packaging:	<p>Outer packaging <b>must</b> be sealed and should be properly marked with the following information. If outer packaging of response submission is not properly marked, the package may be opened for bid identification purposes.</p> <ul style="list-style-type: none"><li>• Bid number    • Date and time of bid opening    • Vendor's name and return address</li></ul>		
<b>OFFICE OF PROCUREMENT CONTACT INFORMATION</b>			
OP Buyer:	Margurite Al-Uqdah, Issuing Officer	Issuing Officer's Phone Number:	501-682-8743
Email Address:	Margurite.al-uqdah@dhs.arkansas.gov	DHS's Main Number:	501-682-1001
DHS Website: OP Website:	<a href="http://www.humanservices.arkansas.gov/Pages/procurement.aspx">http://www.humanservices.arkansas.gov/Pages/procurement.aspx</a> or <a href="http://www.arkansas.gov/dfa/procurement/bids/index.php">http://www.arkansas.gov/dfa/procurement/bids/index.php</a>		

## **SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION**

- **Do not provide responses to items in this section unless specifically and expressly required.**

### **1.1 PURPOSE**

The Department of Human Services (DHS) Office of Procurement (OP) issues this Request for Qualifications (RFQ) on behalf of the Division of Children and Family Services (DCFS) to obtain qualified Private Licensed Placement Agencies. These agencies will provide foster care services in family homes for children who cannot be maintained in their own homes and have been placed in foster care. The service is for children and youth statewide that are referred by or in the custody of the State.

DCFS is interested in considering proposals statewide. See **Attachment D** for state map of DCFS areas and counties.

### **1.2 TYPE OF CONTRACT**

- A. A Term contract will be awarded to multiple vendors.
- B. The term of the contract will be for one (1) year. The anticipated starting date of the contract is July 1, 2017. Upon mutual agreement by the vendor and agency, the contract may be renewed by DCFS on a year-to-year basis, for up to six (6) additional one-year terms or a portion thereof.
- C. The total contract term **shall not** be more than seven (7) years.

### **1.3 ISSUING AGENCY**

DHS, Office of Procurement, as the issuing office, is the sole point of contact throughout this solicitation and award process. Questions regarding this solicitation shall be directed to the Issuing Officer listed on page one of this document.

### **1.4 BID OPENING LOCATION**

Responses submitted by the opening time and date **shall** be opened at the following location:

Department of Human Services  
Office of Procurement  
700 Main Street, DPW, Room 3201  
Little Rock, AR 72201

### **1.5 DEFINITION OF REQUIREMENT**

- A. The words “**must**” and “**shall**” signify a Requirement of this solicitation and that vendor’s agreement to and compliance with that item is mandatory.
- B. Exceptions taken to any Requirement in this RFQ, whether submitted in the vendor’s response or in subsequent correspondence, **shall** cause the vendor’s response to be disqualified.
- C. Vendor may request exceptions to NON-mandatory items. Any such request **must** be declared on, or as an attachment to, the appropriate section’s *Agreement and Compliance Page* in the *Response Packet*. Vendor **must** clearly explain the requested exception and should reference the specific solicitation item number to which the exception applies. (See *Agreement and Compliance Page*.)

### **1.6 DEFINITION OF TERMS**

- A. The Issuing Officer has made every effort to use industry-accepted terminology in this RFQ and will attempt to further clarify any point of an item in question as indicated in *Clarification of Bid Solicitation*.
- B. The words “bidder” and “vendor” are used synonymously in this document.
- C. The terms “Request for Qualifications”, “RFQ” and “Bid Solicitation” are used synonymously in this document.
- D. The terms “buyer” and “Issuing Officer” are synonymously in this document.

## 1.7 RESPONSE DOCUMENTS

### A. Original Response Packet

1. The original *Response Packet* **must** be submitted on or before the bid opening date and time.
2. The *Response Packet* should be clearly marked "Original" and **must** include the following:
  - a. Original signed *Response Signature Page*. (See *Response Signature Page*.)
  - b. Original signed *Agreement and Compliance Pages*. (See *Agreement and Compliance Pages*.)
  - c. Original signed *Proposed Subcontractors Form*. (See *Subcontractors*.)
  - d. Response to the *Information for Evaluation* section included in the *Response Packet*.
  - e. Other documents and/or information as may be expressly required in this *Bid Solicitation*.
3. The following items should be submitted in the original *Response Packet*.
  - a. EO 98-04 Disclosure Form. (See *Standard Terms and Conditions*, #27. *Disclosure*.)
  - b. Copy of Vendor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
  - c. Resumes
4. **DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.

### B. Pricing is not requested for this solicitation and **must not** be submitted with the bidder's response. (See *Pricing*.)

### C. Additional Copies and Redacted Copy of the Response Packet

In addition to the original *Response Packet*, the following items should be submitted:

1. Additional Copies of the *Response Packet*
  - a. Three (3) complete hard copies (marked "COPY") of the *Response Packet*.
  - b. Four (4) electronic copies of the *Response Packet*, preferably on flash drives. CDs will also be acceptable.
  - c. All additional hard copies and electronic copies **must** be identical to the original hard copy. In case of a discrepancy, the original hard copy **shall** govern.
  - d. If OP requests additional copies of the response, the copies **must** be delivered within twenty-four (24) hours of request.
2. One (1) redacted copy (marked "REDACTED") the original *Response Packet*, preferably on a flash drive. A CD will also be acceptable. (See *Proprietary Information*.)

## 1.8 **ORGANIZATION OF RESPONSE DOCUMENTS**

- A. It is strongly recommended that vendors adhere to the following format and suggestions when preparing their Response.
- B. The original *Response Packet* and all copies should be arranged in the following order.
  - *Response Signature Page.*
  - *All Agreement and Compliance Pages.*
  - *Proposed Subcontractors Form.*
  - Signed Addenda, if applicable.
  - E.O. 98-04 – *Contract Grant and Disclosure Form.*
  - *Equal Opportunity Policy.*
  - Other documents and/or information as may be expressly required in this RFQ. Label documents and/or information so as to reference the *Bid Solicitation's* item number.
  - Response to the *Information for Evaluation* section of the *Response Packet*.

## 1.9 **CLARIFICATION OF BID SOLICITATION**

- A. Any questions requesting clarification of information contained in this RFQ **must** be **submitted in writing via email by 4:00 p.m., Central Time on or before March 3, 2017** to the DHS Issuing Officer as shown on page one (1) of this RFQ.
- B. For each question submitted, vendor should reference the specific solicitation item number to which the questions refers.
- C. Vendors' written questions will be consolidated and responded to by DHS. The State's consolidated written response is anticipated to be posted to the DHS and OSP website by the close of business on **March 9, 2017**.
- D. Vendors may contact the Issuing Officer with non-substantive questions at any time prior to the bid opening.
- E. Oral answers to vendor questions may be given as a matter of courtesy and is not a part of any contract resulting from this solicitation and may not reasonably be relied on by any vendor as an aid to interpretation unless it is reduced to writing and expressly adopted by DHS.
- F. It is the vendor's responsible to guarantee receipt of the questions by the specific time and date. The State accepts no responsibility for accurate or timely receipt of email submission from respondents

## 1.10 **RESPONSE SIGNATURE PAGE**

- A. An official authorized to bind the vendor(s) to a resultant contract **must** sign the *Response Signature Page* included in the *Response Packet*.
- B. Vendor's signature on this page **shall** signify vendor's agreement that either of the following **shall** cause the vendor's response to be disqualified:
  1. Additional terms or conditions submitted intentionally or inadvertently.
  2. Any exception that conflicts with a Requirement of this *Bid Solicitation*.

## 1.11. **AGREEMENT AND COMPLIANCE PAGES**

- A. Vendor **must** sign all *Agreement and Compliance Pages* relevant to each section of the *Bid Solicitation Document*. The *Agreement and Compliance Pages* are included in the *Response Packet*.
- B. Vendor's signature on these pages **shall** signify agreement to and compliance with all Requirements within the designated section.

**1.12 SUBCONTRACTORS**

- A. Vendor **must** complete, sign and submit the *Proposed Subcontractors Form* included in the *Response Packet* to indicate vendor's intent to utilize, or to not utilize, subcontractors.
- B. Additional subcontractor information may be required or requested in following sections of this *Bid Solicitation* or in the *Information for Evaluation* section provided in the *Response Packet*. **Do not** attach any additional information to the *Proposed Subcontractors Form*.

**1.13 PRICING**

Vendor **must** not include any pricing in their response. Should the hard copies or electronic copies of their Response packet contain any pricing, the response shall be disqualified. Contracted services as a result of this RFQ will be Fixed Rate Reimbursement at **\$45.00 per day** a child is placed.

**1.14 PRIME CONTRACTOR RESPONSIBILITY**

- A. A joint response submitted by two or more vendors is acceptable. However, a single vendor **must** be identified as the prime contractor.
- B. The prime contractor **shall** be held responsible for the contract and **shall** be the sole point of contact.

**1.15 PROPRIETARY INFORMATION**

- A. Submission documents pertaining to this *Bid Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).
- B. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the *Response Packet*. A CD is also acceptable.
- C. Except for the redacted information, the redacted copy **must** be identical to the original hard copy, reflecting the same pagination as the original and showing the space from which information was redacted.
- D. The vendor **shall** be responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- E. The redacted copy **shall** be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the vendor.
- F. If a redacted copy of the submission documents is not provided with vendor's response packet, a copy of the non-redacted documents, with the exception of financial data, **shall** be released in response to any request made under the Arkansas Freedom of Information Act (FOIA).
- G. If the State deems redacted information to be subject to FOIA, the vendor will be contacted prior to release of the documents.

**1.16 CAUTION TO VENDORS**

- A. Prior to any contract award, all communication concerning this RFQ **must** be addressed through Issuing Officer.
- B. Vendor **must not** alter any language in any solicitation document provided by the State.
- C. All official documents and correspondence related to this solicitation **shall** be included as part of the resultant contract.
- D. Responses **must** be submitted only in the English language.
- E. The State **shall** have the right to award or not award a contract, if it is in the best interest of the State to do so.
- F. Vendor **must** provide clarification of any information in their response documents as requested by DHS.
- G. Qualifications **must** meet or exceed the required specifications as set forth in this *Bid Solicitation*.

**1.17 REQUIREMENT OF ADDENDUM**

- A. This *Bid Solicitation* **shall** be modified only by an addendum written and authorized by DCFS.
- B. An addendum posted within three (3) calendar days prior to the bid opening **shall** extend the bid opening and may or may not include changes to the Bid Solicitation.
- C. The vendor **shall** be responsible for checking the DHS and OSP websites, <http://www.humanservices.arkansas.gov/Pages/procurement.aspx> or <http://www.arkansas.gov/dfa/procurement/bids/index.php> for any and all addenda up to bid opening.

**1.18 AWARD PROCESS****A. Award Determination**

1. Contracts that are awarded to respondents must be awarded to respondents whose proposal is determined to be most advantage to DHS based on the selection criteria.
2. The contracts are subjected to state approval processes including but not limited to approval by DFA and, legislative review as well as federal agency oversight and is not valid until those are complete.
3. The Division reserves the right to award multiple contracts.

**B. Anticipation to Award**

1. Once anticipated successful vendors have been determined, the anticipated award will be posted on the DHS and OSP websites at <http://www.humanservices.arkansas.gov/Pages/procurement.aspx> and <http://www.arkansas.gov/dfa/procurement/bids/index.php>.
2. The anticipated award will be posted for a period of fourteen (14) days prior to the issuance of a contract. Vendors and agencies are cautioned that these are preliminary results only, and a contract will not be issued prior to the end of the fourteen day posting period.
3. DHS **shall** have the right to waive the policy of Anticipation to Award when it is in the best interest of the State.
4. It is the vendor's responsibility to check the OSP and DCFS websites for the posting of an anticipated award notice.

**C. Issuance of a Contract**

1. Any resultant contract of this *Bid Solicitation* **shall** be subject to State approval processes which may include Legislative review.
2. A State Procurement Official will be responsible for award and administration of any resulting contract(s).

**1.19 MINORITY BUSINESS POLICY**

- A. Minority is defined by Arkansas Code Annotated § 15-4-303 as a lawful permanent resident of this State who is:

- African American
- American Indian
- Asian American
- Hispanic American
- Pacific Islander American
- A Service Disabled Veterans as designated by the United States Department of Veteran Affairs

- B. The Arkansas Economic Development Commission conducts a certification process for minority businesses and disabled veterans. The vendor's Certification Number should be included on the vendor's *Response Signature Page*.

**1.20 EQUAL OPPORTUNITY POLICY**

- A. In compliance with Arkansas Code Annotated § 19-11-104, OSP is required to have a copy of the vendor's *Equal Opportunity (EO) Policy* prior to issuing a contract award.
- B. *EO Policies* may be submitted in electronic format to the following email address: [margurite.al-Uqdah@dhs.arkansas.gov](mailto:margurite.al-Uqdah@dhs.arkansas.gov), but should also be included as a hardcopy accompanying the solicitation response.
- C. The submission of an *EO Policy* to DHS is a one-time Requirement. Vendors are responsible for providing updates or changes to their respective policies, and for supplying *EO Policies* upon request to other State agencies that must also comply with this statute.
- D. Vendors who are not required by law by to have an *EO Policy* **must** submit a written statement to that effect.

**1.21 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS**

- A. Pursuant to Arkansas Code Annotated § 19-11-105, prior to the award of a contract, selected vendor(s) **must** have a current certification on file with DHS stating that they do not employ or contract with illegal immigrants.
- B. DHS will notify the selected vendor(s) prior to award if their certification has expired or is not on file. Instructions for completing the certification process will be provided to the vendor(s) at that time.

**1.22 PAST PERFORMANCE**

In accordance with provisions of State Procurement Law, specifically OSP Rule R5:19-11-230(b) (1), a vendor's past performance with the State may be used to determine if the vendor is "responsible". Responses submitted by vendors determined to be non-responsible **shall** be disqualified.

**1.23 COMPLIANCE WITH THE STATE SHARED TECHNICAL ARCHITECTURE PROGRAM**

The respondent's solution **must** comply with the State's shared Technical Architecture Program which is a set of policies and standards that can be viewed at: <http://www.dis.arkansas.gov/policiesStandards/Pages/default.aspx>. Only those standards which are fully promulgated or have been approved by the Governor's Office apply to this solution.

**1.24 PUBLICITY**

- A. Vendors **shall not** issue a news release pertaining to this *Bid Solicitation* or any portion of the project without OSP's prior written approval.
- B. Failure to comply with this Requirement **shall** be cause for a vendor's response to be disqualified.

**1.25 RESERVATION**

The State **shall not** pay costs incurred in the preparation of a response.

## **SECTION 2 – MINIMUM REQUIREMENTS**

- **Do not provide responses to items in this section unless specifically and expressly required.**

### **2.1 INTRODUCTION**

Private Licensed Placement Agencies (PLPA) will provide foster homes for children who cannot maintain in their homes and as result have been placed in foster care. The PLPA will be responsible for recruitment, training, licensing compliance, support and retention of the homes. They will also complete all necessary background checks, training, home studies and monitor all re-evaluations of the homes. The PLPA do not depend upon the Department of Human Services DHS), the Division of Children and Family Services (DCFS) to provide these services. The PLPA will support DCFS in the mission of reunification and achieving permanency for children and youth.

The service is needed in all 10 DCFS service areas. The selected vendor(s) will place children and youth referred by or in the custody of DCFS statewide. Respondent **shall** provide services to clients in any county in the state. See **Attachment D** for DCFS areas and counties.

### **2.2 VENDOR QUALIFICATIONS**

- A. **Must** meet the foster care requirements outlined in the Minimum Licensing Standards for Child Welfare Agencies, Pub. 004. Pub can be viewed at the following link:  
[http://humanservices.arkansas.gov/dcfs/DCFSpublications/PUB\\_04\\_A.pdf](http://humanservices.arkansas.gov/dcfs/DCFSpublications/PUB_04_A.pdf)
- B. **Must** be licensed as a Child Welfare Agency as set out in the Minimum Licensing Standards for Child Welfare Agencies; and,
- C. **Must** be available to accept DCFS referrals upon the contract's effective date.
- D. If the vendor has been a provider of DHS in the past, they **must** be a provider in good standing.
- E. The vendor **must** be responsible for the reporting of funds received through DHS and the payment of all required federal and state taxes accrued through resultant contract.
- F. The business entity **must** be a licensed corporation, professional association or limited liability corporation authorized to do business in Arkansas.

#### **2.2.1** Vendor **shall** provide a detail background of their organization which will include but not be limited to

- Date established;
- Ownership, (whether public, partnership, subsidiary or specified other);
- Total number of employees;
- An organization chart displaying the overall business structure.

#### **2.2.2** Vendor **shall** provide a list of personnel that will work under contract. List shall contain the position, resume and credentials.

#### **2.2.3** Vendor **shall** submit 3 letters of recommendation from 3 different sources. If subcontractors are proposed, three letters of recommendation should also be submitted for each contractor. DHS reserves the right to contact the references submitted as well as any other references which may attest to the respondent's work experience. Letters of recommendation shall have the following criteria:

- They shall be on official letterhead of the party submitting recommendations;
- They shall be from entities with recent contract experience with the respondent (within the last 3 years);
- They shall be individuals who can directly attest to the respondent's qualifications relevant to this RFQ.
- They shall be limited to organizational recommendations, not personal recommendations;
- They shall be dated no more than six months prior to the proposal submission date;
- They shall include the current phone number, mailing address, email address, title and printed name;
- Signature of the individual submitting the recommendation and,
- They shall not be from current DHS employees.



**2.3 PERFORMANCE STANDARDS**

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided. *Scope of Work and Sample Performance Standards* identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards a vendor **must** meet in order to avoid assessment of damages (see **Attachment C**)
- B. The State may be open to negotiations of Performance Standards prior to contract award, prior to the commencement of services, or at times throughout the contract duration.
- C. 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.
- D. All changes made to the Performance Standards **shall** become an official part of the contract.
- E. Performance Standards **shall** continue throughout the term of the contract.
- F. Failure to meet the minimum Performance Standards as specified **shall** result in the assessment of damages.
- G. In the event a Performance Standard is not met, the vendor will have the opportunity to defend or respond to the insufficiency. The State **shall** have the right to waive damages if it determines there were extenuating factors beyond the control of the vendor that hindered the performance of services. In these instances, the State **shall** have final determination of the performance acceptability.
- H. 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.

## **SECTION 3 – CRITERIA FOR SELECTION**

- **Do not provide responses to items in this section.**

### **3.1 REVIEW OF SUBMISSION**

- A. DHS will review each response received to this RFQ to verify Requirements have been met. Responses that do not meet Requirements **shall** be disqualified and vendor shall not receive a contract for service.
- B. Vendors whose responses meet all requirements of this RFQ may receive a contract for services.
- C. DHS reserves the right to clarify presented information as it deems necessary.

## **SECTION 4 – GENERAL CONTRACTUAL REQUIREMENTS**

- **Do not provide responses to items in this section.**

### **4.1 SCHEDULE OF EVENTS**

RFQ issued	February 21, 2017
Due date and time for written questions	March 3, 2017
Due date for answers to questions	March 9, 2017
Closing date and time for receipt of proposals	March 17, 2017 12:00 p.m. (CST)
Date for opening proposals	March 17, 2017 2:00 p.m. (CST)
Completion of proposal evaluation and potential awardee selection	March 24, 2017
Anticipation of Award letter posted on or about	March 27, 2017
Contract start date (Subject to State approval)	July 1, 2017

### **4.2 PAYMENT AND INVOICE PROVISIONS**

- A. Invoices for monthly billing must be developed online through the CHRIS FINANCIAL MODULE @ <https://dhs.arkansas.gov/dcfs/pie/login.aspx>. Reimbursement of services rendered under resultant contracts will be by submission of an itemized monthly billing.
- B. Billing must be signed by an authorized agent or designee for the provider and have the certification of compliance with the performance indicators.
- C. Only original billing invoices will be accepted. No photocopies.
- D. Invoices are to be submitted by the 10<sup>th</sup> of the month to the Foster Care Manager. If the 10<sup>th</sup> is on a weekend, billing is due no later than the following Monday.
- E. No payment will be made prior to delivery of service. Vendor will not receive any other payment.
- F. Payment will be made only after the vendor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.
- G. The agency's Purchase Order Number and /or the Contract Number should be referenced on each invoice.
- H. Selected vendor **must** be registered with the State in order to receive payment and future *Bid Solicitation* notifications. Vendors may register on-line at <https://www.ark.org/vendor/index.html>

**4.3 GENERAL INFORMATION**

- A. The State **shall not** lease any equipment or software for a period of time which continues past the end of a fiscal year unless the contract allows for cancellation by the State Procurement Official upon a 30 day written notice to the vendor/lessor in the event funds are not appropriated.
- B. The State **shall not** contract with another party to indemnify and defend that party for any liability and damages.
- C. The State **shall not** pay damages, legal expenses, or other costs and expenses of any other party.
- D. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- E. The State **shall not** agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
- F. The State **shall not** enter a contract which grants to another party any remedies other than the following:
- The right to possession.
  - The right to accrued payments.
  - The right to expenses of de-installation.
  - The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
  - The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- G. The laws of the State of Arkansas **shall** govern this contract.
- H. A contract **shall not** be effective prior to award being made by a State Procurement Official.

**4.4 CONDITIONS OF CONTRACT**

- A. The vendor **shall** at all times observe and comply with federal and State of Arkansas laws, local laws, ordinances, orders, and regulations existing at the time of, or enacted subsequent to the execution of a resulting contract which in any manner affect the completion of the work.
- B. The vendor **shall** indemnify and save harmless the agency and all its officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the vendor.
- C. The vendor **shall** agree to pro forma contract as presented in **Attachment A**, DHS Standard Terms and Conditions as presented in **Attachment B** and, Performance Based Contracting Standards as presented in **Attachment C**.

**4.5 STATEMENT OF LIABILITY**

- A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of vendor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. The vendor **shall** retain total liability for equipment, software and technical and business or operations literature. The State **shall not** at any time be responsible for or accept liability for any vendor-owned items.
- B. The vendor's liability for damages to the State **shall** be limited to the value of the Contract or \$5,000,000, whichever is higher. The foregoing limitation of liability **shall not** apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the vendor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract. The vendor and the State **shall not** be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability **shall not** apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the vendor; to claims covered by other specific provisions of the Contract calling for damages; or

to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

- C. Language in these terms and conditions **shall not** be construed or deemed as the State's waiver of its right of sovereign immunity. The vendor agrees that any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

#### **4.6 RECORD RETENTION**

- A. The vendor **shall** maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and as specified by the State of Arkansas Law. Upon request, access **shall** be granted to State or Federal Government entities or any of their duly authorized representatives.
- B. Financial and accounting records **shall** be made available, upon request, to the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.
- C. Other sections of this RFQ may contain additional Requirements regarding record retention.

#### **4.7 CONFIDENTIALITY**

- A. The vendor, vendor's subsidiaries, and vendor's employees **shall** be bound to all laws and to all Requirements set forth in this *Bid Solicitation* concerning the confidentiality and secure handling of information of which they may become aware during the course of providing services under a resulting contract.
- B. Consistent and/or uncorrected breaches of confidentiality may constitute grounds for cancellation of a resulting contract, and the State **shall** have the right to cancel the contract on these grounds.
- C. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

#### **4.8 CONTRACT INTERPRETATION**

Should the State and vendor interpret specifications differently, either party may request clarification. However if an agreement cannot be reached, the determination of the State **shall** be final and controlling.

#### **4.9 CANCELLATION**

- A. In the event the State no longer needs the service or commodity specified in the contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated funding. The State **shall** give the vendor written notice of cancellation, specifying the terms and the effective date of contract termination. The effective date of termination **shall** be 30 days from the date of notification, unless a longer timeframe is specified in the notification.
- B. Upon default of a vendor, the State **shall** agree to pay only sums due for goods and services received and accepted up to cancellation of the contract.

#### **4.10 SEVERABILITY**

If any provision of the contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the agency and the vendor **shall** be relieved of all obligations arising under such provision. If the remainder of the contract is capable of performance, it **shall not** be affected by such declaration or finding and **shall** be fully performed.

## **SECTION 5 – STANDARD TERMS AND CONDITIONS**

- **Do not provide responses to items in this section.**

1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
3. **BID SUBMISSION:** Original Response Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Response Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Multiple responses **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.
4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the *Bid Solicitation*. Unless otherwise specified, the bid **must** be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the *Bid Solicitation*.
5. **QUANTITIES:** Quantities stated in a *Bid Solicitation* for term contracts are estimates only, and are not guaranteed. Vendor **must** bid unit price on the estimated quantity and unit of measure specified. The State may order more or less than the estimated quantity on term contracts. Quantities stated on firm contracts are actual Requirements of the ordering agency.
6. **BRAND NAME REFERENCES:** Unless otherwise specified in the *Bid Solicitation*, any catalog brand name or manufacturer reference used in the *Bid Solicitation* is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid **must** show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The State **shall** have the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the State may require the vendor to supply additional descriptive material. The vendor **shall** guarantee that the product offered will meet or exceed specifications identified in this *Bid Solicitation*. Vendors not bidding an alternate to the referenced brand name or manufacturer **shall** be required to furnish the product according to brand names, numbers, etc., as specified in the solicitation.
7. **GUARANTY:** All items bid **shall** be newly manufactured, in first-class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the *Bid Solicitation*. The vendor hereby guarantees that everything furnished hereunder **shall** be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it **shall** conform thereto and **shall** serve the function for which it was furnished. The vendor **shall** further guarantee that if the items furnished hereunder are to be installed by the vendor, such items **shall** function properly when installed. The vendor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The vendor's obligations under this paragraph **shall** survive for a period of one year from the date of delivery, unless otherwise specified herein.
8. **SAMPLES:** Samples or demonstrators, when requested, **must** be furnished free of expense to the State. Each sample should be marked with the vendor's name and address, bid or contract number and item number. If requested, samples that are not destroyed during reasonable examination will be returned at vendor's expense. After reasonable examination, all demonstrators will be returned at vendor's expense.
9. **TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE:** Tests may be performed on samples or demonstrators submitted with the bid or on samples taken from the regular shipment. In the event products tested fail to meet or exceed all conditions and Requirements of the specifications, the cost of the sample used and the reasonable cost of the testing **shall** be borne by the vendor.
10. **AMENDMENTS:** Vendor's responses cannot be altered or amended after the bid opening except as permitted by regulation.
11. **TAXES AND TRADE DISCOUNTS:** Do not include State or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.
12. **AWARD:** Term Contract: A contract award will be issued to the successful vendor. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. Firm Contract: A written State purchase order authorizing shipment will be furnished to the successful vendor.
13. **DELIVERY ON FIRM CONTRACTS:** This solicitation shows the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the vendor cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of State Procurement **shall** have the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost **shall** be borne by the vendor.

14. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:30 p.m. Central Time, unless prior approval for other delivery has been obtained from the agency. Packing memoranda **shall** be enclosed with each shipment.
15. **STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.
16. **DEFAULT:** All commodities furnished **shall** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor. The contractor **must** give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the vendors list or suspension of eligibility for award.
17. **VARIATION IN QUANTITY:** The State assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.
18. **INVOICING:** The contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the *Bid Solicitation*, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.
19. **STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder **shall** remain property of the State, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the contractor's expense to the F.O.B. point provided by the agency or by OSP. Vendor **shall** properly identify items being returned.
20. **PATENTS OR COPYRIGHTS:** The contractor **must** agree to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
21. **ASSIGNMENT:** Any contract entered into pursuant to this solicitation **shall not** be assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
22. **CLAIMS:** Any claims the Contractor may assert under this Agreement shall be brought before the Arkansas State Claims Commission ("Commission"), which shall have exclusive jurisdiction over any and all claims that the Contractor may have arising from or in connection with this Agreement. Unless the Contractor's obligations to perform are terminated by the State, the Contractor shall continue to provide the Services under this Agreement even in the event that the Contractor has a claim pending before the Commission.
23. **CANCELLATION:** In the event, the State no longer needs the commodities or services specified for any reason, (e.g., program changes; changes in laws, rules or regulations; relocation of offices; lack of appropriated funding, etc.), the State **shall** have the right to cancel the contract or purchase order by giving the vendor written notice of such cancellation thirty (30) days prior to the date of cancellation.  
  
Any delivered but unpaid for goods will be returned in normal condition to the contractor by the State. If the State is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims. If upon cancellation the contractor has provided services which the State has accepted, the contractor may file a claim. **NOTHING IN THIS CONTRACT SHALL BE DEEMED A WAIVER OF THE STATE'S RIGHT TO SOVEREIGN IMMUNITY.**
24. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the vendor agrees that: (a) the vendor **shall not** discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the vendor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the vendor will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the vendor to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause **shall** be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the vendor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or vendor.
25. **CONTINGENT FEE:** The vendor guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the vendor for the purpose of securing business.
26. **ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the vendor named on the *Response Signature Page* for this solicitation, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.
27. **DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this contract. Any contractor,

whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to the agency.



**ATTACHMENT A****STATE OF ARKANSAS  
PROFESSIONAL CONSULTANT SERVICES CONTRACT**

<b>CONTRACT #</b>		<b>FEDERAL I.D. #</b>	
<b>VENDOR #</b>		<b>MINORITY VENDOR</b>	YES NO

**1. PROCUREMENT:**

Check ONE appropriate box below for the method of procurement for this contract:

- |   |   |   |   |
|---|---|---|---|
| <input type="checkbox"/> ABA Criteria   | <input type="checkbox"/> Request for Proposal | <input type="checkbox"/> Competitive Bid                | <input type="checkbox"/> Request for Qualifications |
| <input type="checkbox"/> Intergovernmental  | <input type="checkbox"/> Emergency            | <input type="checkbox"/> Invitation for Bid             | <input type="checkbox"/> Cooperative Contract       |
| <input type="checkbox"/> Sole Source by Justification ( <i>Justification must be attached</i> ) |   | <input type="checkbox"/> Sole Source by Intent to Award |   |
| <input type="checkbox"/> Sole Source by Law - Act # _____                                       |   | or Statute #: _____                                     |   |
| <input type="checkbox"/> Exempt By Law  |   |   |   |

**2. TERM DATES:**

The term of this agreement shall begin on \_\_\_\_\_ and shall end on \_\_\_\_\_.  
 (mm/dd/yyyy) (mm/dd/yyyy)

**3. CONTRACTING PARTIES:**

State of Arkansas is hereinafter referred to as the agency and vendor is herein after referred to as the Vendor.

<b>AGENCY NUMBER &amp; NAME</b>	0710-DHS	-----	Service Bureau
<b>VENDOR NAME</b>			
<b>VENDOR ADDRESS</b>			
<b>TRACKING # 1</b>		<b>TRACKING # 2</b>	

**4A. PROJECTED TOTAL CONTRACT COST:**

Projected total cost of entire project if all available extensions of this contract are completed (up to the date anticipated and stated in Section 13)	
---	--

**4B. CALCULATIONS OF COMPENSATION**

For work to be accomplished under this agreement, the Vendor agrees to provide the personnel at the rates scheduled for each level of consulting personnel as listed herein. Calculations of compensation and reimbursable expenses shall only be listed in this section. If additional space is required, a continuation sheet may be used as an attachment.

LEVEL OF PERSONNEL	NUMBER	COMPENSATION RATE	TOTAL FOR LEVEL
			\$ 0.00
			\$ 0.00
			\$ 0.00

Total compensation exclusive of expense reimbursement \$ 0.00

REIMBURSABLE EXPENSES ITEM (Specify)	ESTIMATED RATE OF REIMB.	TOTAL
		\$ 0.00
		\$ 0.00
		\$ 0.00

Total reimbursable expenses \$0.00

Total compensation inclusive of expense reimbursement \$0.00

**5. SOURCE OF FUNDS:**

Complete appropriate box(es) below to total 100% of the funding in this contract. You may use an attachment if needed.

Fund Source	Identify Source of Funds*	Fund	Fund Center	Amount of Funding	% of Total Contract Cost
Federal Funds					
State Funds**					
Cash Funds					
Trust Funds					
Other Funds					
<b>TOTALS</b>				<b>\$0.00</b>	<b>0.0</b>

\* **MUST BE SPECIFIC** (i.e. fees, tuition, agricultural sales, bond proceeds, donations, etc.)

\*\* "State Funds" is defined as and deemed State General Revenue Dollars. If other state funds are being used such as tobacco funds, general improvement funds, etc., these should be noted. Special revenue funds from taxes or fees generated for the agencies should be shown as "Other" and the actual source of the funds should be clarified in the "Identify Source of Funds."

**6. RENDERING OF COMPENSATION:**

The method(s) of rendering compensation and/or evaluation of satisfactory achievement toward attainment of the agreement listed herein is as follows, or in attachment no. \_\_\_\_ to this agreement.

Payment shall be made after services are rendered and an invoice received.

**7. OBJECTIVES AND SCOPE:**

State description of services, objectives, and scope to be provided. (DO NOT USE "SEE ATTACHED")

**8. PERFORMANCE STANDARDS:**

List Performance standards for the term of the contract. (If necessary, use attachments)

See Attachment

**9. ATTACHMENTS:**

List ALL attachments to this contract by attachment number:

**10. CERTIFICATION OF VENDOR**

A. “I, \_\_\_\_\_  
(Vendor) \_\_\_\_\_  
(Title)

certify under penalty of perjury that, to the best of my knowledge and belief, no regular full-time or part- time employee of any State agency of the State of Arkansas will receive any personal, direct or indirect monetary benefits which would be in violation of the law as a result of the execution of this contract.” Where the Vendor is a widely-held public corporation, the term ‘direct or indirect monetary benefits’ “shall not apply to any regular corporate dividends paid to a stockholder of said corporation who is also a State employee and who owns less than ten percent (10%) of the total outstanding stock of the contracting corporation.”

B. List any other contracts or subcontracts you have with any other state government entities. (Not applicable to contracts between Arkansas state agencies) (If no contracts or subcontracts, please put “N/A” or “None”)

C. Are you currently engaged in any legal controversies with any state agencies or represent any clients engaged in any controversy with any Arkansas state agency? (If no controversies, please put “N/A” or “None”)

D. The Vendor agrees to list below, or on an attachment hereto, names, addresses, and relationship of those persons who will be supplying services to the state agency at the time of the execution of the contract. If the names are not known at the time of the execution of the contract, the Vendor shall submit the names along with the other information as they become known. Such persons shall, for all purposes, be employees or independent contractors operating under the control of the Vendor (sub- contractors), and nothing herein shall be construed to create an employment relationship between the agencies and the persons listed below.

NAME	RELATIONSHIP

E. The agency shall exercise no managerial responsibilities over the Vendor or his employees. In carrying out This contract, it is expressly agreed that there is no employment relationship between the contracting parties.

**11. DISCLOSURE REQUIRED BY EXECUTIVE ORDER 98-04:**

Any contract or amendment to a contract executed by an agency which exceeds \$25,000 shall require the Vendor to disclose information as required under the terms of Executive Order 98-04 and the Regulations pursuant thereto. The Vendor shall also require the subcontractor to disclose the same information. The Contract and Grant Disclosure and Certification Form (Form PCS-D attachment II-10.3) shall be used for this purpose.

Contracts with another government entity such as a state agency, public education institution, federal government entity, or body of a local government are exempt from disclosure requirements.

The failure of any person or entity to disclose as required under any term of Executive Order 98-04, or the violation of any rule, regulation or policy promulgated by the Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose, or in violation, to all legal remedies available to the Agency under the provisions of existing law.

**12. CANCELLATION CLAUSES****A. NON-APPROPRIATION CLAUSE PURSUANT TO §19-11-1012(11):**

"In the event the State of Arkansas fails to appropriate funds or make monies available for any biennial period covered by the term of this contract for the services to be provided by the Vendor, this contract shall be terminated on the last day of the last biennial period for which funds were appropriated or monies made available for such purposes."

"This provision shall not be construed to abridge any other right of termination the agency may have."

**B. CONVENIENCE CLAUSE:**

In the event the State no longer needs the service or commodity specified in the contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, the State may cancel the contract or purchase order by giving the vendor written notice of such cancellation 30 days prior to the date of cancellation.

**13. TERMS**

The term of this agreement begins on the date in SECTION 2 and will end on the date in SECTION 2, and/or as agreed to separately in writing by both parties.

This contract may be extended until \_\_\_\_\_ (mm/dd/yyyy), in accordance with the terms stated in the Procurement, by written mutual agreement of both parties and subject to: approval of the Arkansas Department of Finance and Administration/Director of Office of State Procurement, appropriation of necessary funding, and review by any necessary state or federal authority.

Contracts will require review by Legislative Council or Joint Budget Committee prior to the approval of the Department of Finance and Administration/Director of Office of State Procurement and before the execution date if the total initial contract amount or the total projected amount is greater than or equal to \$50,000, including any amendments or possible extensions.

Any amendment which increases the dollar amount or involves major changes in the objectives and scope of the contract will require review by Legislative Council or Joint Budget Committee.

**14. AUTHORITY**

- A. This contract shall be governed by the Laws of the State of Arkansas as interpreted by the Attorney General of the State of Arkansas and shall be in accordance with the intent of Arkansas Code Annotated §19-11-1001 et seq.
- B. Any legislation that may be enacted subsequent to the date of this agreement, which may cause all or any part of the agreement to be in conflict with the laws of the State of Arkansas, will be given proper consideration if and when this contract is renewed or extended; the contract will be altered to comply with the then applicable laws.

**15. AGENCY CONTACTS FOR QUESTION(S) REGARDING THIS CONTRACT:**

**Contact #1 – Agency Representative submitting/tracking this contract**

_____	_____
(Name)	(Title)
_____	_____
(Telephone #)	(Email)

**Contact #2 – Agency Representative with knowledge of this project (for general questions and responses)**

_____	_____
(Name)	(Title)
_____	_____
(Telephone #)	(Email)

**Contact #3 – Agency Representative Director or Critical Contact (for time sensitive questions and responses)**

_____	_____
(Name)	(Title)
_____	_____
(Telephone #)	(Email)

**16. AGENCY SIGNATURE CERTIFIES NO OBLIGATIONS WILL BE INCURRED BY A STATE AGENCY UNLESS SUFFICIENT FUNDS ARE AVAILABLE TO PAY THE OBLIGATIONS WHEN THEY BECOME DUE.**

**17. SIGNATURES:**

_____ VENDOR	_____ DATE	_____ AGENCY DIRECTOR	_____ DATE
_____ TITLE		_____ TITLE	
		Arkansas Department of Human Services	
		-----	
		PO Box 1437 Slot	
		Little Rock, AR 72203-1437	
_____ ADDRESS		_____ ADDRESS	

APPROVED:

\_\_\_\_\_  
DEPARTMENT OF FINANCE AND ADMINISTRATION

\_\_\_\_\_  
DATE

## ATTACHMENT B

### PROFESSIONAL SERVICES CONTRACT GENERAL TERMS AND CONDITIONS FOR NON-STATE AGENCY

In consideration of the premises and the mutual agreements hereinafter set forth, the Contractor and the Department of Human Services ("the Department") agree as follows:

#### LEGAL CONSIDERATIONS

The contract shall be construed according to the laws of the State of Arkansas. Any legal proceedings against the Department shall be brought in the State of Arkansas' administrative or judicial forums and the rights and remedies of the parties hereunder shall be determined in accordance with such laws. Venue for all legal proceedings shall be in Pulaski County, Arkansas. Nothing in this contract may be construed as a waiver of the Department's sovereign immunity.

In no event shall the initial term of this contract extend beyond the end of the current biennial period unless the General Assembly, prior to the expiration of the biennial period, makes an appropriation for such purpose.

#### FINANCIAL TERMS OF THE CONTRACT

All services rendered under this contract must be billed as set out herein. No services may be billed to a Medicaid Provider or to any other contract. Payments will be made after services are provided based on the following financial terms:

Funding Source	Reimbursement Method *	Payment Limitations **	Match Requirements***	
			Maximum Amount of Match Required <u>OR</u> Percentage of Allowable Billing Required	Type(s) of Match (Select from listing below)

\*Reimbursement Method: (Select from the drop-down)

\*\*Payment Limitations: (Select from the drop-down)

\*\*\*Matching Requirements: The Contractor certifies the funds, property, goods, or services listed in this section will be used to meet the match requirements of this agreement. If there are no matching requirements for a funding source, enter "None" in the corresponding box above.

Type(s) of Match: The matching requirement may be satisfied by any one or a combination of the following methods unless specific funding source restrictions apply:

**Cash Match:** Cash will be obtained by the Contractor and will be applied against allowable costs covered by this agreement.

**Donation of Property:** Title to or the use of property or equipment has been donated by a public agency for the program(s) covered by this agreement. If title to property is donated, match value is the fair market value of the property. If the use of the property or equipment is donated, match value is the fair rental value as determined by applicable Department policy will be used as matching of the payments.

**Third Party In-Kind Contributions.** Property, goods, or services have been donated by a non-federal agency for the program(s) covered by this agreement without charge to the contractor. The Code of Federal Regulations, Title 45, Part 74, Subpart G shall be used to establish the basis of valuation.

**Funds Transfer:** Match funds will be submitted by a third party to the Department of Human Services by check or money order under the terms of this agreement. Matching funds are to be received by the Department in an amount sufficient to match billing before the contractor will be reimbursed for services.

+

The Contractor certifies that any funds to be donated under this agreement which are derived or come directly or indirectly from Federal or State funds, or any other contractor under contract to the Department, have been specifically listed as a source above.

The Contractor certifies that the matching arrangements comply with requirements established in the Code of Federal Regulations, Title 45, Part 74, Subpart G (Cost Sharing or Matching) and all applicable Department policy.

### **Term of the Contract**

The Department shall notify the contractor at least thirty (30) days prior to the end of the contract period or extension thereof if the State intends to amend to extend the contract. If notification is not made, the contract will terminate at the end of the contract period or current extension thereof.

### **Terms of Payment/Billing**

The Contractor agrees to submit all billing invoices within sixty days of the expiration of the contract. Any billings for services rendered during a particular state fiscal year which are not submitted within ninety days of the end of the fiscal year will not be paid.

### **Termination of Contract**

The Department may cancel this contract unilaterally at any time, for any reason including unavailability of federal funds, state funds or both by giving the other party thirty (30) calendar days written notice, and delivering notice of cancellation either in person or by certified mail, return receipt requested, restricted delivery. Availability of funds will be determined at the sole discretion of the Department.

Payments for completed services or deliverables satisfactorily delivered to and approved by the Department shall be at the contract price. Payment for partially completed services or deliverables satisfactorily delivered to and not yet approved by the Department shall be at a price mutually agreed upon by the Contractor and the Department. In addition to any other law, rule or provision which may authorize complete or partial contract termination, the Department may terminate this contract in whole or in part when the Department determines that the Contractor or subcontractor has failed to satisfactorily perform its contractual duties and responsibilities.

### **Procedure on Expiration or Termination**

Upon delivery by certified mail to the Contractor of a Notice of Termination specifying the nature of the termination and the date upon which such termination becomes effective, the Contractor shall:

- Stop work under the contract on the date and to the extent specified in the Notice of Termination,
- Place no further orders or enter in any additional subcontracts for services,
- Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination,
- Assign to the Department in the manner and to the extent directed by the Department representative all of the right, title and interest of the Contractor in the orders or subcontracts so terminated. The Department shall have the right, in its discretion, to settle or pay any and all claims arising out of the termination of such orders and subcontracts,
- With the approval or ratification of the Department representative, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole or part, in accordance with the provisions of this Contract.
- Transfer title to the Department and deliver in the manner, at the time, and extent directed by the Department representative, all files, data, information, manuals, or other documentation, or property, in any form whatsoever, that relate to the work terminated by the Notice of Termination.
- Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination.
- Take such action as may be necessary, or as the Department representative may direct, for the protection and

preservation of the property related to the contract which is in the possession of the Contractor and in which the Department has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item or reimbursable price under this clause.

### **Termination Claims**

After receipt of a Notice of Termination, the Contractor shall submit to the Department all outstanding claims within ten (10) working days. The Contractor and the Department may agree upon the amounts to be paid to the Contractor by reason of the total or partial termination of work as described in this section.

In the event of the failure of the Contractor and the Department to agree in whole or in part as to the amount with respect to costs to be paid to the Contractor in connection with the total or partial termination of work as described in this section, the Department shall determine, on the basis of information available, the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor the amount so determined.

### **Contractor**

It is expressly agreed that the Contractor, officers, and employees of the Contractor or Sub-Contractor in the performance of this contract shall act in an independent capacity and not as officers or employees of the Department. It is further expressly agreed that the Department shall exercise no managerial responsibility over the Contractor nor shall this contract be construed as a partnership or joint venture between the Contractor or any subcontractor and the Department or the State of Arkansas.

The Contractor hereby represents and warrants to the Department that as of the execution date of this Contract:

- The Contractor has been duly organized and is validly existing and in good standing under the laws of the State of Arkansas, with power, authority, and legal right to enter into this Contract.
- There are no proceedings or investigations pending or threatened, before any court, regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Contractor or its properties (i) seeking to prevent the consummation of any of the transactions contemplated by this Contract; or (ii) seeking any determination or ruling that might materially and adversely affect the performance by the Contractor of its obligations hereunder, or the validity or enforceability of this Contract.
- All approvals, authorizations, consents, orders or other actions of any person or of any governmental body or official required to be obtained on or prior to the date hereof in connection with the execution and delivery of this Contract and the performance of the services contemplated by this Contract and the fulfillment of the terms hereof have been obtained.
- The Contractor and the executive officers of the Contractor have not been the subject of any proceeding under the United States Bankruptcy Code.

### **Force Majeure**

The Contractor will not be liable for any cost to the Department if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, Acts of God, fires, quarantine restriction, strikes and freight embargoes.

### **Disputes**

In the event of any dispute concerning any performance by the Department under the contract, the Contractor shall notify the Division Director in writing. The State Procurement Director or a designee, prior to commencement of an action in court or any other action provided by law, will attempt to negotiate a settlement of the dispute with the parties in accordance with A.C.A. § 19-11-246. If the claim or controversy is not resolved by mutual agreement, and after reasonable notice to the parties in accordance with A.C.A. § 19-11-246 (c) (1), the State Procurement Director or his designee shall promptly issue a decision in writing stating the reason for the actions taken and a copy of the decision shall be mailed or otherwise furnished to the Contractor. This decision will be final and conclusive.

Pending final determination of any dispute hereunder, the contractor shall proceed diligently with the performance of the contract and in accordance with the Division Director's instructions.



**Confidentiality of Information**

In connection with this contract, the Contractor will receive certain Confidential Information relating to DHS clients. For purposes of this contract, any information furnished or made available to the Contractor relating to DHS clients, the financial condition, results of operation, business, customers, properties, assets, liabilities or information relating to recipients and providers including but not limited to protected health information as defined by the Privacy Rule promulgated pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996, is collectively referred to as "Confidential Information". The Contractor shall comply with all DHS policies governing privacy and security of Confidential Information, including the contracting division's designation of the Confidential Information as required by the Arkansas Data and System Security Classification Standards, and shall implement and maintain reasonable security procedures and practices appropriate to the nature of the Confidential Information as required by A.C.A. § 4-11-104, the Personal Information Protection Act ("the Act"). In addition, the Contractor shall comply with the Business Associate Agreement between the parties, incorporated herein by reference, and shall disclose any breaches of privacy or security by contacting the Information Technology Security Officer within one (1) business day of the breach by notification to the following e-mail address: dhs-it-security@arkansas.gov.

The contractor shall treat all Confidential Information which is obtained by it through its performance under the contract as Confidential Information as required by state and federal law and shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations. The parties acknowledge that the disclosure of Confidential Information in contravention of the provisions hereof would damage the party to whom the information disclosed relates and such party has the right to seek all remedies at law or equity to minimize such damage and to obtain compensation therefore. The Contractor agrees to retain all protected health information as defined by the Privacy Rule promulgated pursuant to HIPAA for six (6) years or as otherwise required by HIPAA.

The contractor shall safeguard the use and disclosure of information concerning applicants for or recipients of Title XIX services in accordance with 42 CFR Part 431, Subpart F, and shall comply with 45 CFR Parts 160 and 164 and shall restrict access to and disclosure of such information in compliance with federal and state laws and regulations.

**Public Disclosure**

Upon signing of the contract by all parties, terms of the contract shall become available to the public, pursuant to the provisions of Ark. Code Ann., § 25-19-101 et seq.

**Inspection of Work Performed**

The State of Arkansas and its authorized representatives shall, at all reasonable times, have the right to enter the Contractor's work areas to inspect, monitor, or otherwise evaluate the quality, appropriateness, and timeliness of work, services, or both, that have been or are being performed.

**Subcontracts**

The Contractor is fully responsible for all work performed under the contract. The Contractor may, with the prior written consent of the Department, enter into written subcontract(s) for performance of certain of its functions under the contract. No subcontract under this contract shall in any way relieve the Contractor of any responsibility for performance of its duties. The Contractor agrees that all subcontracts shall adhere to Department policies.

The Contractor shall give the Department immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the Contractor or any subcontractor which may result in litigation related in any way to the contract or the Department.

In accordance with Executive Order 98-04, IF the agreement between the contractor and the subcontractor is greater than \$25,000.00:

- o The contractor shall require the subcontractor to complete a **Contract and Grant Disclosure and Certification Form**. This form must be signed no later than 10 days after entering into any agreement with a subcontractor and the contractor shall transmit a copy of this form to the agency.
- o The contractor shall include the following in the contract between the Contractor and that Subcontractor:
  - Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract.
  - The party who fails to make the required disclosure or who violates the rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

**Audit Requirement:**

Contractor shall comply with the Department audit requirements as outlined in "Arkansas Department of Human Services Audit Guidelines". Copies may be obtained from:

Arkansas Department of Human Services  
Office of Quality Assurance  
P.O. Box 1437 – Slot S270  
Little Rock, Arkansas 72203-1437

**Indemnification**

The Contractor agrees to indemnify, defend, and save harmless the State, the Department, its officers, agents and employees from any and all damages, losses, claims, liabilities and related costs, expenses, including reasonable attorney's fees and disbursements awarded against or incurred by the Department arising out of or as a result of:

- Any claims or losses resulting from services rendered by any person, or firm, performing or supplying services, materials, or supplies in connection with the performance of the contract;
- Any claims or losses to any person or firm injured or damaged by the erroneous or negligent acts (including without limitation disregard of Federal or State regulations or statutes) of the Contractor, its officers or employees in the performance of the contract;
- Any claims or losses resulting to any person or firm injured or damaged by the Contractor, its officers or employees by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in a manner not authorized by the contract, or by Federal or State regulations or statutes;
- Any failure of the Contractor, its officers or employees to observe local, federal or State of Arkansas laws or policies, including but not limited to labor laws and minimum wage laws.
- The Contractor shall agree to hold the Department harmless and to indemnify the Department 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 Department may sustain as a result of the Contractor's or its subcontractor's performance or lack of performance.

**Assignments**

The Contractor shall not assign the contract in whole or in part or any payment arising therefrom without the prior written consent of the Department representative.

**Waiver**

No covenant, condition, duty, obligation, or undertaking contained in or made a part of the contract will be waived except by the written agreement of the parties, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, any other party shall have the right in invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

**Department Property**

Property, including intellectual property, acquired or created by the Contractor as a Contract deliverable, is the property of the Department. The Contractor shall be responsible for the proper custody and care of all Department owned property, including Department owned property used in connection with the performance of this contract and the Contractor agrees to reimburse the Department for its loss or damage due to negligence, theft, vandalism, or Acts of God.

**Use and Ownership of Software**

The Contractor will have access to all applications software that the Department requires the Contractor to use in the performance of the services covered in the contract, subject to customary confidentiality and other license terms and conditions. No changes in the applications software may be made without the written consent of the Contract Administrator if the change would have the effect of causing the Department to incur additional costs for either hardware or software upgrades or both.

Any applications software developed by the Contractor in the performance of the services under this contract must become the property of the State of Arkansas at no additional cost. Any existing software applications owned by the Contractor and used in the performance of the services under this contract must be granted to the State of Arkansas at no additional cost, subject to customary confidentiality and other license terms and conditions.

**Contract Variations**

If any provision of the Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Department and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of the Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

**Attorney's Fees**

In the event that either party to this Contract deems it necessary to take legal action to enforce any provision of the contract, and the Department prevails, the Contractor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation as set by the court or hearing officer. Legal action shall include administrative proceedings.

**Liability**

In the event of non-performance of a contractual obligation by the Contractor or his agents which results in the determination by Federal authorities of noncompliance with Federal regulations and standards, the Contractor will be liable to the Department in full for all penalties, sanctions and disallowances assessed against the Department.

**Records Retention**

The Contractor agrees to retain all records for five (5) years after final payment is made under this Contract or any related subcontract. In the event any audit, litigation or other action involving these records is initiated before the end of the five (5) year period, the Contractor agrees to retain these records until all issues arising out of the action are resolved or until the end of the five (5) year period, whichever is later. The Contractor agrees to retain all protected health information as defined by the Privacy Rule promulgated pursuant to HIPAA for six (6) years or as otherwise required by HIPAA.

**Access to Contractor's Records**

The Contractor will grant access to its records upon request by state or federal government entities or any of their duly authorized representatives. Access will be given to any books, documents, papers or records of the Contractor which are related to any services performed under the contract. The Contractor additionally consents that all subcontracts will contain adequate language to allow the same guaranteed access to the records of subcontractors.

**Ownership of Documentation**

All documents and deliverables prepared by the Contractor and accepted by the Department shall become the property of the Department and shall not be used for any other purpose by the Contractor without the Department's specific written consent.

**Disclosure**

The failure of any person or entity to disclose as required under any term of Executive Order 98-04, or the violation of any rule, regulation or policy promulgated by the State Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose or in violation to all legal remedies available to the Department under the provisions of existing law.

**Set-Off**

The parties agree that the Department, in its sole discretion, shall have the right to set-off any money Contractor owes the Department from the Department's payment to Contractor under this contract.

**State and Federal Laws**

Performance of this contract by both parties must comply with State and federal laws and regulations. If any statute or regulation is enacted which requires a change in this contract or any attachment, then both parties will deem this contract and any attachment to be automatically amended to comply with the newly enacted statute or regulation as of its effective date.

**DHS Policy 5005**

Contractor shall comply with DHS Policy 5005 prior to implementation of any Information Technology (IT) Systems Secure Development and Testing Training.

**Technology Access**

When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Vendor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that system meets the statutory requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.

ACCORDINGLY, THE VENDOR EXPRESSLY REPRESENTS AND WARRANTS to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) or similar documentation to demonstrate compliance with 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications) that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:

- Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means;
- Presenting information, including prompts used for interactive communications, in formats intended for non-visual use;
- After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired;
- Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means;
- Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact;
- Integrating into networks used to share communications among employees, program participants, and the public; and
- Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

If the information technology product or system being offered by the Vendor does not completely meet these standards, the Vendor must provide an explanation within the Voluntary Product Accessibility Template (VPAT) detailing the deviation from these standards.

State agencies cannot claim a product as a whole is not commercially available because no product in the marketplace meets all the standards. If products are commercially available that meets some but not all of the standards, the agency must procure the product that best meets the standards or provide written documentation supporting selection of a different product.

For purposes of this section, the phrase “equivalent access” means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Act 308 of 2013, if equivalent access is not reasonably available, and then individuals who are blind or visually impaired shall be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.

As provided in Act 308 of 2013, if the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

### Employee Background Requirements

Contractor shall comply with Arkansas Code Annotated (A.C.A.) §21-15-101 *et seq*, or any amendments thereto, which requires all employees of state agencies, in designated positions including those providing care, supervision, treatment or any other services to the elderly, mentally ill or developmentally disabled persons, to individuals with mental illnesses or to children who reside in any state-operated facility or a position in which the applicant or employee will have direct contact with a child, to have a criminal history check and a central registry check. Should an applicant or employee be found to have been convicted of a crime listed in A.C.A. §21-15-101 *et seq*, that employee shall be prohibited from providing services in a designated position as defined by Arkansas law or being present at the facility. Should an applicant or employee be found to have been named as an offender or perpetrator in a true, substantiated, or founded report from the Child Maltreatment Central Registry, the Adult Abuse Central Registry, or the Certified Nursing Assistant/ Employment Clearance Registry, the applicant/employee shall be immediately disqualified.

### Prohibition against Contingent Fees

It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business.

### Compliance with Department Policy Issuances

The Contractor agrees to deliver the services authorized by this contract or any attachment in accordance with all policies, manuals and other official issuances of the State of Arkansas and Department promulgated through the Administrative Procedures Act.

### Relinquishment

The failure of the Department to insist upon the performance of any of the conditions in any one or more instances shall not be construed as a waiver or relinquishment of the future benefit of said condition.

### Entire Contract

The parties acknowledge that each have read this Contract, understand it and agree to be bound by the terms. The parties further agree that this Contract is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes all prior proposals, representations, arrangements, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof.

This Contract may not be modified, amended, or in any way altered except by a written agreement duly executed by the parties and approved in accordance with the laws and established procedures of the State of Arkansas.

### Survival of Rights and Obligations

The right and obligations of the Parties under this Contract shall survive and continue after the ending or expiration of the term of this Contract, and shall bind the parties, and their legal representatives, successors, heirs and assigns.

### Notices

All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if mailed by first class mail, postage prepaid, to:

\_\_\_\_\_  
(address)

Attention: \_\_\_\_\_  
(name of contractor contact person or such other name or address as  
May hereafter be furnished to Department in writing by the Contractor)

Notices to the Department should be mailed to:

\_\_\_\_\_  
(address)

Attention: \_\_\_\_\_  
(name of Department contract person)

**Severability of Provisions**

If any one or more of the covenants, agreements, provisions or terms of this Contract shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Contract and shall in no way affect the validity or enforceability of the other provisions of this Contract.

**Certification Regarding Lobbying:**

The Contractor will comply with public law 101-121, section 319 (section 1352 of Title 31 U.S.C.) for an award in excess of \$100,000.00 by certifying that appropriated federal funds have not been or will not be used to pay any person to influence or attempt to influence a federal official/employee in connection with the awarding of any federal contract, grant, loan or cooperative agreement.

If the Contractor has paid or will pay for lobbying using funds other than federal appropriated funds, Standard Form-LLL (Disclosure of Lobbying Activities) shall be completed and included as an attachment to this contract.

**Certification Regarding Debarment**

The Contractor, as a lower tier recipient of \$25,000.00 or more in federal funds, will comply with Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions). By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

- are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state agency
- where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled \*Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions\* without modification in all lower tier covered transactions.

Contractor certifies that the Contractor is in compliance with Public Law 101-121 (Certification Regarding Lobbying) and Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions):

**Certification Regarding Employment Practices**

Neither the Contractor nor its subcontractors shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. The Contractor must take affirmative action to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. Such action shall include, but not be limited to, the following:

- Employment
- Promotion
- Demotion or transfer
- Recruitment or recruitment advertising
- Layoff or termination
- Rates of pay or other forms of compensation, and
- Selection for training, including apprenticeship.

Contractor certifies that neither the contractor nor its subcontractors shall discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, age (except as provided by law) or disability. Contractor must insure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, gender, national origin, age (except as provided by law) or disability. Such action shall include, but not be limited to, employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeships.

## ATTACHEMNT C

**NOTE:** These Performance Based Standards are **EXAMPLES ONLY** and represent the types of indicators which will be included in the contract.

### ARKANSAS DEPARTMENT OF HUMAN SERVICES PERFORMANCE BASED CONTRACTING

#### PRIVATE LICENSED PLACEMENT AGENCY

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, 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 contract program deliverables and performance indicators to be performed by the contractor are:

Performance Measures		
Service Criteria <sup>1</sup>	Acceptable Performance	Results of Insufficient Performance <sup>2</sup>
<b>A. Contractor Qualifications</b>  1. The business entity must be a corporation, professional association or limited liability corporation authorized to do business in Arkansas.  2. The business entity must be licensed as a Child Welfare Agency.	100% compliance required at all times.  Contractor shall submit monthly certification of compliance with performance indicator. Foster Care Manager will monitor for compliance.	Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.  DCFS and the contractor may agree upon and implement a corrective action plan or may withhold payment for services until sufficient performance occurs.
<b>B. Delivery of Services</b>  1. The Contractor will provide services in compliance with the <u>Minimum Licensing Standards for Child Welfare Agencies, PUB 004</u> incorporated herein by reference.	100% compliance required at all times.  Contractor shall submit monthly certification of compliance with performance indicator. Foster Care Manager	Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.  DCFS and the contractor may agree upon and implement a corrective action plan or may

<sup>1</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>2</sup> The results set forth are not exclusive and shall in no way exclude or limit any remedies available at law or in equity.

	will monitor for compliance.	withhold payment for services until sufficient performance occurs.
<p>2. The Private Licensed Placement Agencies (PLPA) shall be responsible for the following.</p> <ul style="list-style-type: none"> <li>Recruitment, training, licensing compliance, support and retention of the foster homes.</li> <li>All necessary background checks, training and home studies.</li> <li>The PLPA will monitor all re-evaluations of the home including re-evaluations of the homes including the quarterly visits and, will meet all Minimum Licensing Requirements.</li> </ul> <p>The agency will provide these services independent of the Department of Human Services (DHS), Division of Children and Family Services (DCFS).</p>	<p>100% compliance required at all times.</p> <p>Contractor shall submit monthly certification of compliance with performance indicator. Foster Care Manager will monitor for compliance.</p>	<p>Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.</p> <p>DCFS and the contractor may agree upon and implement a corrective action plan or may withhold payment for services until sufficient performance occurs.</p>
<p>3. Services shall be provided in family homes for children who have been placed in foster care. Only children and youth in the custody of the DHS, DCFS shall be accepted into a DCFS slot.</p>	<p>100% compliance required at all times.</p> <p>Contractor shall submit monthly certification of compliance with performance indicator. Foster Care Manager will monitor for compliance.</p>	<p>Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.</p> <p>DCFS and the contractor may agree upon and implement a corrective action plan or may withhold payment for services until sufficient performance occurs.</p>
<p>4. DCFS shall have the exclusive authority to place children and youth into private licensed agency foster care services purchased by DCFS under the contract.</p>	<p>100% compliance required at all times.</p> <p>Contractor shall submit monthly certification of compliance with performance indicator. Foster Care Manager will monitor for compliance.</p>	<p>Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.</p> <p>DCFS and the contractor may agree upon and implement a corrective action plan or may withhold payment for services until sufficient performance occurs.</p>
<p>5. Placement is contingent upon the client meeting the admission criteria stated in the program description submitted by the Contractor, hereinafter "Program Description" incorporated herein by reference and the availability of slots/beds within a contract period.</p>	<p>100% compliance required at all times.</p> <p>Contractor shall submit monthly certification of compliance with performance indicator. Foster Care Manager will monitor for compliance.</p>	<p>Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.</p> <p>DCFS and the contractor may agree upon and implement a corrective action plan or may withhold payment for services until sufficient performance occurs.</p>
<p>6. The PLPA will support DCFS in the mission of reunification and achieving permanency for children and youth.</p> <p>A. Sibling Group Placement</p> <p>1. When siblings are separated, the PLPA will work with DCFS to follow policy to ensure siblings are placed together.</p>	<p>100% compliance required at all times.</p> <p>Contractor shall submit monthly certification of compliance with performance indicator. Foster Care Manager will monitor for</p>	<p>Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.</p> <p>DCFS and the contractor may agree upon and implement a corrective action plan or may withhold payment for services until</p>



<p>B. Sibling Visitation</p> <ol style="list-style-type: none"> <li>1. When siblings are separated, the PLPA will assist DCFS in weekly visitation of the siblings.</li> <li>2. The PLPA will assist DCFS with transportation to these visits.</li> </ol> <p>C. Respite Care</p> <ol style="list-style-type: none"> <li>1. Contractor must follow guidelines established by the Contractor's program description and child welfare licensing.</li> </ol> <p>D. Reunification</p> <ol style="list-style-type: none"> <li>1. Contractor will support DCFS in reunification Efforts.</li> </ol>	<p>compliance.</p>	<p>sufficient performance occurs.</p>
<p>7. When a client is moved from one PLPA home to another home within the program, written permission from the DCFS Family Service Worker(s) stating the reason for the move must be provided to the Foster Care Manager within twenty-four (24) hours of the move.</p>	<p>100% compliance required at all times.</p> <p>Contractor shall submit monthly certification with performance indicator. Foster Care Manager will monitor for compliance.</p>	<p>Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.</p> <p>DCFS and the contractor may agree upon and implement a corrective action plan or may withhold payment for services until sufficient performance occurs.</p>
<p><b>C. Required Licensure</b></p> <ol style="list-style-type: none"> <li>1. Contractor must ensure appropriate mental health services are obtained for clients accepted in their program, as needed and DCFS policy shall be followed. Services shall be provided by professionals licensed for independent practice in the State of Arkansas in the discipline of Social Work or Counseling and shall provide all therapy.</li> </ol>	<p>100% compliance required at all times.</p> <p>Required licensure shall be shall be maintained throughout the contract period.</p>	<p>Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.</p> <p>DCFS and the contractor may agree upon and implement a corrective action plan or may withhold payment for services until sufficient performance occurs.</p>
<ol style="list-style-type: none"> <li>2. Competent qualified person(s) providing direct client service shall have a MA or BA degree in one or more of the following: <ul style="list-style-type: none"> <li>• Counseling</li> <li>• Criminal Justice</li> <li>• Early Childhood Education</li> <li>• Social Work</li> <li>• Psychology or related degree</li> </ul> </li> </ol> <p>The person(s) providing the service must be a direct employee of the Contractor.</p>	<p>100% compliance required at all times.</p> <p>Required licensure and proof of supervision will be maintained throughout the contract period.</p> <p>Verification of staff credentials shall be provided to DCFS upon request.</p> <p>Contractor shall submit monthly certification with performance indicator. Foster Care Manager will monitor for compliance.</p>	<p>Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.</p> <p>DCFS and the contractor may agree upon and implement a corrective action plan.</p> <p>DCFS may withhold payment for services until sufficient performance occurs.</p>
<p><b>D. Plan of Care</b></p> <ol style="list-style-type: none"> <li>1. For each client in the program the Contractor will work with DCFS and maintain a minimum of monthly contact with the Family Service Worker to discuss</li> </ol>	<p>100% compliance required at all times.</p> <p>Contractor shall submit monthly certification of</p>	<p>Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.</p>

client's progress, continuing needs and any problem areas when appropriate.	compliance with performance indicator. Foster Care Manager will monitor for compliance.	DCFS and the contractor may agree upon and implement a corrective action plan or may withhold payment for services until sufficient performance occurs.
2. DCFS Family Service Worker shall develop a visitation schedule with the client's family and coordinate with the private licensed agency case manager.	100% compliance required at all times.  Contractor shall submit monthly certification with performance indicator. Foster Care Manager will monitor for compliance.	Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.  DCFS and the contractor may agree upon and implement a corrective action plan or may withhold payment for services until sufficient performance occurs.
3. Visitation will take place unless such visitation is: <ul style="list-style-type: none"> <li>• Contrary to court order</li> <li>• Parental rights have been terminated</li> <li>• Potential visitation has been order stopped</li> <li>• Temporarily halted or terminated for therapeutic reasons approved by DCFS.</li> </ul>	100% compliance required at all times.  Contractor shall submit monthly certification of compliance with performance indicator. Foster Care Manager will monitor for compliance.	Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.  DCFS and the contractor may agree upon and implement a corrective action plan or may withhold payment for services until sufficient performance occurs.
4. The Contractor's agent assigned to the client will accompany the DCFS Family Service Worker on the visit as appropriate, and assist with transportation when available.	100% compliance required at all times.  Contractor shall submit monthly certification of compliance with performance indicator. Foster Care Manager will monitor for compliance.	Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.  DCFS and the contractor may agree upon and implement a corrective action plan or may withhold payment for services until sufficient performance occurs.
5. Contractor shall maintain records of the client-specific case planning per DCFS policy and child welfare licensing. Documentation shall be at a minimum reflecting the following: <ul style="list-style-type: none"> <li>• Case Plan developed in accordance with recommendations made by a physician, licensed professionals or DCFS involved in the care of a client.</li> <li>• Any revisions of the case plan</li> </ul>	100% compliance required at all times.  Contractor shall submit monthly certification of compliance with performance indicator. Foster Care Manager will monitor for compliance.	Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.  DCFS and the contractor may agree upon and implement a corrective action plan or may withhold payment for services until sufficient performance occurs.
6. Contractor will submit monthly update reports to the DCFS Family Services Worker regarding the children placed in their foster homes.	100% compliance required at all times.  Contractor shall submit monthly certification of compliance with performance indicator.	Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.  DCFS and the contractor may agree upon and implement a corrective action plan or may

	Foster Care Manager will monitor for compliance.	withhold payment for services until sufficient performance occurs.
<b>E. Billing</b>  Invoices for monthly billing must be developed on-line through the PROVIDER INVOICE ENTRY (PIE) at <a href="https://dhs.arkansas.gov/dcfs/pie/login.aspx">https://dhs.arkansas.gov/dcfs/pie/login.aspx</a> . Only signed original invoices will be accepted. Monthly billing will be submitted to the Foster Care Manager by the 10th day of the following month. DCFS will not be responsible for billing received outside this timeframe, but will consider each case on an individual basis.	100% compliance required at all times.  Invoices along with monthly Certification of Compliance shall be submitted to the Foster Care Manager by the 10 <sup>th</sup> day of the following month. If the 10 <sup>th</sup> day is on a weekend billing is due no later than the following Monday.  Only original signed invoices will be accepted.	Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.  DCFS and the contractor may agree upon and implement a corrective action plan or may withhold payment for services until sufficient performance occurs.
<b>F. Documents submitted monthly along with Invoice for payment:</b>  1. A monthly report will be submitted along with each monthly invoice that lists all admissions, discharges, unplanned discharges and Youth Status information. 2. Certification of compliance of performance indicators will be submitted with each monthly invoice. 3. Document the portion amount of monthly contract payment given to Foster Parents which should be at a minimum of 34% of total monthly amount, per client, paid to Contractor on a monthly basis.	100% compliance required at all times.  Contractor shall submit monthly certification of compliance with performance indicator. Foster Care Manager will monitor for compliance.	Less than 100% compliance will result in the contractor being contacted by DCFS to address insufficient performance.  DCFS and the contractor may agree upon and implement a corrective action plan or may withhold payment for services until sufficient performance occurs.

#### REMEDIES FOR UNACCEPTABLE PERFORMANCE

Acceptable performance of all provisions and performance indicators in this contract shall be determined in the sole discretion of the contracting division. In addition to other remedies identified herein, one or more of the following remedies may be imposed for unacceptable performance of a provision or performance indicator:

1. Contractor will be required to submit and implement an acceptable corrective action plan. Payment may be delayed pending satisfactory implementation of the plan.
2. Payment may be withheld or reduced.
3. The Contract may be terminated.

The remedies listed above are in addition to all others available at law or equity.

## ATTACHMENT D

### State Map of DCFS Areas and Counties

