

ARKANSAS DEPARTMENT OF HUMAN SERVICES
PERFORMANCE BASED CONTRACTING

Pursuant to Ark. Code Ann. 19-11-267 et. seq., the selected contractor shall comply with performance-based standards. Following are the performance-based standards that will be a part of the contract and with which the contractor must comply for acceptable performance to occur under the contract.

- I. The contractor must comply with all statutes, regulations, codes, ordinances, and licensure or certification requirements applicable to the contractor or to the contractor's agents and employees and to the subject matter of the contract. Failure to comply shall be deemed unacceptable performance.
- II. Except as otherwise required by law, the contractor agrees to hold the contracting Division/Office harmless and to indemnify the contracting Division/Office for any additional costs of alternatively accomplishing the goals of the contract, as well as any liability, including liability for costs or fees, which the contracting Division/Office may sustain as a result of the contractor's performance or lack of performance.
- III. During the term of the contract, the division/office will complete sufficient performance evaluation(s) to determine if the contractor's performance is acceptable.
- IV. The State **shall** have the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards, and may include the input of the vendor so as to establish standards that are reasonably achievable.
- V. The contract program deliverables and performance indicators to be performed by the contractor are:

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| <p>HEALTH CERTIFICATIONS</p> <p>The FSMC shall maintain state and/or local health certifications for any facility outside the DYS in which it proposes to prepare meals and shall maintain this health certification for the duration of the contract as required under USDA Regulations 7 CFR § 210.16(c).</p> | <p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p> | <p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd incident: A ten percent (10%) penalty will be assessed in the following months' payment to the provider for each thirty (30) day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>3rd incident: DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and terminating the contract.</p> |
| <p>MEAL REQUIREMENTS</p> <p>A. The FSMC shall serve meals on such days and at such times as requested by the DYS.</p> <p>B. Meals provided must consist of breakfast, lunch and dinner. Snack must be delivered with lunch and will be distributed as needed.</p> <p>C. The DYS shall retain control of the quality, extent, and general nature of the food service.</p> <p>D. The DYS shall offer free, reduced-price, and full-price reimbursable meals to all eligible children participating in the programs.</p> | <p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as</p> | <p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd incident: A ten percent (10%) penalty</p> |

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| <p>E. In order for the FSMC to offer a' la carte food service, the FSMC must offer free reduced-price, and full-price reimbursable meals to all eligible children.</p> <p>F. The FSMC shall provide meals that meet the menu- planning option.</p> <p>G. Meals provided must meet nutrition requirements set forth by the United States Department of Agriculture for National School Lunch Program for breakfast, lunch and snack **Milk is required for all meals. All milk must be fat-free or low-fat (1 percent). Milk with higher fat content is not allowed. Students must be provided an option between flavored and unflavored milk for breakfast and lunch.</p> <p>H. Meal pattern for dinner must offer the food components and quantities as required in the lunch meal pattern provided in <i>Attachment E</i>. Dinner options may vary as agreed upon by DYS and the contractor.</p> | <p>determined by DHS.</p> | <p>will be assessed in the following months' payment to the provider for each thirty (30) day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>3rd incident: DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and terminating the contract.</p> <p>No payment will be made to the FSMC for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the DYS for each food component in the USDA meal pattern, or do not otherwise meet the requirements of the contract.</p> |
| <p>COMPLIANCE</p> <p>A. The FSMC shall comply with the rules, regulations, policies and instructions of the State Agency and USDA and any additions or amendments thereto, including USDA Regulation 7 CFR Parts 210, 220, 245, 250, 2 CFR 200 318-326, Appendix II to Part 200, 2</p> | <p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and</p> | <p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> |

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| <p>CFR 400, 2CFR 416, 2 CFR 417, and 2 CFR 418; 7 CFR Part 215 (SMP), if applicable; 7CFR Part 225 (SFSP), if applicable; and 7 CFR Part 226 (CACFP); if applicable.</p> <p>B. The DYS shall monitor the food service operation of the FSMC through periodic on-site visits to ensure that the food service is in conformance with USDA program regulations. (Reference 7 CFR §210.16.(a)(2)) Further, if there is more than one school site, there is an additional requirement that the DYS conduct an on-site review of the counting claiming system no later than February 1 of each year as required by 7 CFR §210.8.</p> <p>C. The records necessary for the DYS to complete the required monitoring activities must be maintained by the FSMC under this contract and must be made available to the Auditor General, USDA, the State Agency, and the DYS upon request for the purpose of auditing, examination, and review.</p> <p>D. Contractor shall prepare and deliver three (3) meals per day consisting of breakfast, lunch, and dinner plus snacks for seven (7) days per week during eight (8) week intervals during the fiscal year, except during a two week break between sessions where no meals are delivered. Breakfast, lunch, and snack must comply with USDA requirements and meal patterns to be eligible for reimbursement. Dinner and beverages (other than milk) must meet requirements of the DYS.</p> | <p>standards for acceptable performance throughout the contract term as determined by DHS.</p> | <p>2nd incident: A ten percent (10%) penalty will be assessed in the following months' payment to the provider for each thirty (30) day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>3rd incident: DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and terminating the contract.</p> |
| <p>SAFETY</p> <p>A. Contractor must maintain food safety in accordance with the USDA's Food Safety program.</p> <p>B. All contractor employees must undergo safety and sanitation training and meet all Arkansas Department of Health standards for food preparation and transportation at:</p> | <p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p> | <p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd incident: A ten percent (10%) penalty will be assessed in the following months' payment to the provider for each thirty (30) day period the</p> |

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| <p>https://www.healthy.arkansas.gov/programs-services/topics/food-protection</p> <p>C. The contractor shall maintain a high standard of food service in compliance with the Department of Health. If illness occurs, the contractor may be held liable for medical expenses incurred by the State due to contaminated/adulterated foods being consumed by CSTP stakeholders.</p> <p>D. Contractor shall maintain a “passed” Health inspection throughout the duration of the contract. If at any time the status changes, DYS shall be notified within twenty-four (24) hours of failed status.</p> | | <p>Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>3rd incident: DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and terminating the contract.</p> |
| <p>TRANSPORTATION</p> <p>A. Contractor must ensure that all transport drivers be properly insured, and vehicles properly registered.</p> <p>B. Contractor shall maintain all licensure and permits as required by law throughout the duration of the contract.</p> | <p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p> | <p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd incident: A ten percent (10%) penalty will be assessed in the following months' payment to the provider for each thirty (30) day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>3rd incident: DHS</p> |

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| | | reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and terminating the contract. |
| <p>DELIVERY</p> <p>A. Scheduling of meals must be coordinated with CSTP staff. All meals shall be delivered to CSTP facility according to the following schedule:</p> <p style="padding-left: 40px;">Breakfast 6:00 am – 6:45 am</p> <p style="padding-left: 40px;">Lunch/Snack 11:00 am – 11:45 am</p> <p style="padding-left: 40px;">Dinner 5:00 pm – 5:45 pm</p> <p>B. Delivery drivers must check-in with the security booth to receive a pass for permission to drive through the security gates.</p> <p>C. All deliveries must be made during the agreed upon hours and number of days unless otherwise arranged and coordinated. The Contractor shall give the agency immediate notice of any anticipated delays that will affect the delivery requirement.</p> <p>D. Loss or damage that occurs during transportation, prior to the order being received by the agency, is the Contractor's responsibility. All orders should be properly packaged to prevent damage during shipping.</p> | <p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p> | <p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd incident: A ten percent (10%) penalty will be assessed in the following months' payment to the provider for each thirty (30) day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>3rd incident: DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor</p> |

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| | | Performance Report (VPR) in the vendor file and terminating the contract. |
| General Requirements | | |
| <p>A. Mandated Reporting</p> <p>Pursuant to Ark. Code Ann. §12-18-402 (b)(10) and Ark. Code Ann. §§ 12-12-1708(a)(1)(AA), Contractor and all of its employees, agents, and all Subcontractors and Subcontractor's employees and agents shall immediately make a report to the Child Abuse Hotline or the Adult Maltreatment Hotline (based on type of maltreatment) if Contractor or any of its employees, agents, or Subcontractors' employees and agents, while performing duties under this contract, have reasonable cause to suspect that:</p> <ol style="list-style-type: none"> A child has been subjected to child maltreatment; A child died as a result of child maltreatment; A child died suddenly and unexpectedly; or Observe a child being subjected to conditions or circumstances that would reasonably result in child maltreatment. or An endangered person or an impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term care facility resident maltreatment. <p>A privilege or contract shall not prevent a person from reporting maltreatment when he or she is a mandated reporter and required to report under this section.</p> <p>An employer or supervisor of a mandated reporter shall not prohibit an employee or a volunteer from directly reporting maltreatment to the Hotline.</p> <p>An employer or supervisor of a mandated reporter shall not require an employee or a volunteer to obtain permission or notify any person, including an employee or a supervisor, before reporting maltreatment to the Hotline.</p> <p>Pursuant to Act 531 of 2019, Ark. Code Ann. §12-18-402 (b)(10) and Ark. Code Ann. §§ 12-12-1708(a)(1)(AA), Contractor and all of</p> | <p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p> | <p>For each failure to report, DHS may impose:</p> <ol style="list-style-type: none"> A ten percent (10%) penalty, assessed in the following months' payment for each failure to report. The penalty will be calculated from the total payment for the identified month in which the deficiency took place; or A one percent (1%) penalty, assessed in the next payment for each failure to report. The penalty will be calculated from the projected total yearly contract amount for the contract, as determined by DHS. DHS may elect to calculate penalties/damages differently per occurrence. <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, requiring a Corrective Action Plan (CAP), withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and contract termination.</p> |

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| its employees, agents, and all Subcontractors and Subcontractor's employees and agents are mandated reporters. | | |
| <p>B. Performance Bonding The Contractor shall be required to obtain performance bonds to protect the State's interest as follows:</p> <ol style="list-style-type: none"> 1. The amount of the performance bonds shall be one hundred percent (100%) of the annual contract price, unless the State determines that a lesser amount would be adequate for the protection of the State. 2. The State shall require additional performance bond protection when a contract price is increased or modified. 3. The additional performance bond must be delivered to the Arkansas Department of Human Services Chief Procurement Officer within fourteen (14) calendar days of request. 4. The contractor shall notify the State of any changes, modification, or renewals for the performance bond during the term of the contract. The performance bond documentation must be provided to the State with each required notice. | Acceptable performance is defined as one hundred percent (100%) compliance with Service Criteria at all times throughout the contract term as determined by DHS. | <p>Damages shall be one percent (1%) per day, calculated using the annual contract amount, for each day Vendor fails to meet the Performance Bonding Requirements specified in Service Criteria.</p> <p>In addition, Vendor's continued failure to meet Service Criteria, may result in a below standard Vendor Performance Report (VPR) maintained in the vendor file and contract termination.</p> <p>Failure to provide is a breach of contract and may result in immediate contract termination.</p> |
| <p>C. Conflict of Interest Mitigation During the term of this contract, the Vendor shall comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions. The Vendor shall disclose all actual, apparent, or potential conflicts of interest to the Department of Human Services (DHS) within five (5) days of having knowledge of them. The Vendor shall develop a mitigation plan as requested by DHS which must be approved and accepted by DHS. Any changes to the approved mitigation plan must be approved in advance by DHS.</p> | The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract. | The Vendor will be fined one thousand dollars (\$1,000) per day for each day past five (5) days for each actual, apparent, or potential conflict of interest it fails to disclose. The Vendor shall be fined ten thousand dollars (\$10,000) for the first failure to comply with the mitigation plan developed by the Vendor and approved by DHS. Each subsequent violation of the mitigation plan shall be twice the amount of the immediately preceding violation fine. |

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| <p>D. Transition Planning</p> <p>Ninety (90) days prior to the contract end date, the vendor shall submit to DHS a detailed plan for transitioning all contracted services to DHS, or to another vendor selected by DHS to provide the contracted services.</p> <p>The transition plan shall include provisions for the delivery of all proprietary data collected and/or created during the life of the contract to DHS thirty (30) days prior to the contract end date. All proprietary data collected and/or created during the final thirty (30) days of the contract, or any proprietary data not captured in the initial delivery, shall be delivered to DHS no more than fifteen (15) days following the contract end date.</p> | <p>The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p> | <p>If the Vendor fails to meet the acceptable performance standard, DHS may issue a below standard Vendor Performance Report (VPR) maintained in the vendor file.</p> <p>Final payment may be withheld from the vendor until the all elements of the transition are satisfied as determined by DHS.</p> |
| <p>E. Arkansas Freedom of Information Act (Ark. Code Ann. §25-19-101 et seq.):</p> <ol style="list-style-type: none"> 1. Contractor shall cooperate with DHS requests for information and documents that DHS requires to fulfil an Arkansas Freedom of Information Act (FOIA) request. 2. Contractor shall timely provide all documents in its possession or control to DHS that match the request made by DHS. 3. Contractor is subject to Arkansas FOIA law pursuant to Ark. Code Ann. §25-19-103(7)(A). <p>Contractor shall timely and accurately respond to FOIA requests made directly to Contractor. See Ark. Code Ann. §25-19-101 et seq. for specific requirements.</p> | <p>Contractor shall respond to FOIA requests timely and accurately one hundred percent (100%) of the time.</p> <p>Contractor shall provide information and documents to DHS upon request in the timeframe specified in the request one hundred percent (100%) of the time. DHS shall have sole determination as to the sufficiency of Contractor's response and provision of documents.</p> | <ol style="list-style-type: none"> 1. For each failure to meet performance standard, DHS may impose: <ol style="list-style-type: none"> a. A ten percent (10%) penalty, assessed in the following months' payment for each failure to report. The penalty will be calculated from the total payment for the identified month in which the deficiency took place; or b. A one percent (1%) penalty, assessed in the next payment for each failure to report. The penalty will be calculated from the projected total yearly contract amount for the contract, as determined by DHS. |

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| | | <p>DHS may elect to calculate penalties/damages differently per occurrence.</p> <p>In addition to the above, Contractor shall be responsible for any penalties, fees, and costs imposed on DHS associated with vendor's failure to timely and accurately provide the requested information and documents.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, requiring a Corrective Action Plan (CAP), withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and contract termination.</p> |

Failure to meet the minimum Performance Standards as specified **may** result in the assessment of damages.

In the event a Performance Standard is not met, the vendor will have the opportunity to defend or respond to, or cure to the satisfaction of the State, the insufficiency. The State **may** waive damages if it determines there were extenuating factors beyond the control of the vendor that hindered the performance of services of it is in the best interest of the State. In these instances, the State **shall** have final determination of the performance acceptability.

Should any compensation be owed to the agency due to the assessment of damages, vendor **shall** follow the direction of the agency regarding the required compensation process.

ⁱ Nothing in this table is intended to set forth all obligations of the Contractor under the contract. These obligations are in addition to any others imposed by the contract and applicable law.

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