

**ARKANSAS DEPARTMENT OF HUMAN SERVICES**  
**PERFORMANCE-BASED CONTRACTING**

Pursuant to Arkansas Code Annotated 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, 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:

Service Criteria <sup>i</sup>	Acceptable Performance	Damages for Insufficient Performance <sup>ii</sup>
<p>A. Vendor shall furnish the required lab, personnel, transportation, materials, tools, and equipment necessary for the collection, screening and testing of drug specimens at the Conway Human Development Center (CHDC).</p> <ol style="list-style-type: none"> <li>1. The vendor <b>shall</b> provide the required kit for urine sample collection. The kit shall be the standard: one (1) sealed collection cup, one (1) thirty (30) ml sealable bottle (aliquote container), custody control forms and seals for sealable bottle.</li> <li>2. All testing and results <b>must</b> be completed while observing strict security to prevent tampering and must be completed with strict adherence to the Health Insurance Portability and Accountability ACT (HIPAA).</li> <li>3. Vendor <b>must</b> utilize a Substance Abuse and Mental Health Services Administration (SAMHSA) certified lab for drug screens.</li> <li>4. Vendor <b>must</b> certify that Vendor's testing lab certify on each lab test report that the test was accomplished by using either the Immunoassay test or gas chromatography-mass spectrometry (GC/MS) test.</li> </ol>	<p>The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>The Arkansas Department of Human Services (DHS) reserves the right to impose penalties including but not limited to: withholding payment on invoice until Vendor is in full compliance with this standard, a below standard Vendor Performance Report maintained in the Vendor's file, and contract termination.</p>
<p>B. Screening/specimen pick-up:</p> <ol style="list-style-type: none"> <li>1. Vendor shall perform urine drug screen analysis with laboratory testing and confirmation testing of positive results at a certified and approved testing laboratory as required by Arkansas Code Annotated § 11-14-101 et seq.</li> <li>2. Vendor shall provide sample/specimen pick-up for drug testing Monday through Friday, 8:00 a.m.-4:00 p.m., CT including working holidays (Dr. Martin Luther King Jr.'s Birthday, Presidents Day, and Veterans Day). Samples/specimens for testing must be picked up at least once daily.</li> </ol>	<p>The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>DHS reserves the right to impose penalties including but not limited to: withholding payment on invoice until Vendor is in full compliance with this standard, a below standard Vendor Performance Report maintained in the Vendor's file, and contract termination.</p>

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<p>3. Vendor shall provide alternative drug collection and testing access twenty-four (24) hours per day, three hundred sixty-five (365) days per year, with no closure for holidays or other events, to include hair and/or blood testing at the employee's expense if they are unable to provide a urine sample.</p>		
<p>C. Reporting/Testing:</p> <ol style="list-style-type: none"> <li>1. Vendor shall provide a monthly report of drug tests given for each new hire, promotion, random, reasonable, post-accident, etc., according to a schedule approved by DHS.</li> <li>2. Vendor shall report all negative drug screen results by email, fax, or telephone to CHDC designated employee within twenty-four (24) hours of testing.</li> <li>3. Vendor shall report all positive drug screen results by email, fax, or telephone, to a CHDC designated employee within forty-eight (48) hours of testing.</li> <li>4. Vendor shall confirm all initial positive results by re-testing the same sample at the time results are obtained.</li> </ol>	<p>The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>DHS reserves the right to impose penalties including but not limited to: withholding payment on invoice until Vendor is in full compliance with this standard, a below standard Vendor Performance Report maintained in the Vendor's file, and contract termination.</p>
<p>D. Tested substances:</p> <ol style="list-style-type: none"> <li>1. Vendor shall perform drug screens to include the follow two (2) panels: <ol style="list-style-type: none"> <li>a. Panel #1: <ol style="list-style-type: none"> <li>i. Amphetamines.</li> <li>ii. Barbiturates.</li> <li>iii. Benzodiazepine Metabolites.</li> <li>iv. Cocaine Metabolites.</li> <li>v. Methadone.</li> <li>vi. Methaqualone.</li> <li>vii. Opiates.</li> <li>viii. Phencyclidine (PCP).</li> <li>ix. Propoxyphene.</li> <li>x. THC Metabolite.</li> </ol> </li> <li>b. Panel #2:</li> </ol> </li> </ol>	<p>The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>DHS reserves the right to impose penalties including but not limited to: withholding payment on invoice until Vendor is in full compliance with this standard, a below standard Vendor Performance Report maintained in the Vendor's file, and contract termination.</p>

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<ul style="list-style-type: none"> <li>i. Amphetamines.</li> <li>ii. Barbiturates.</li> <li>iii. Benzodiazepine Metabolites.</li> <li>iv. Cocaine Metabolites.</li> <li>v. Methadone.</li> <li>vi. Methaqualone.</li> <li>vii. Opiates.</li> <li>viii. Phencyclidine (PCP).</li> <li>ix. Propoxyphene.</li> <li>x. THC Metabolite.</li> <li>xi. Alcohol (urine).</li> </ul> <p>2. Contractor shall perform tests on additional substances, which may be unknown at the time of contract commencement, when requested by DHS.</p> <p>3. Contractor must confirm all initial positive by re-testing the same sample at the time the results are obtained.</p> <p>4. Testing by an alternative certified testing laboratory, doctor's office and/or hospital due to employee/applicant protest of the Vendor's drug test results must be completed within twenty-four (24) hours of employee's notification of positive test results. If the test results are negative at the alternate testing facility, Vendor shall be held responsible for payment for the drug test at the alternate testing facility and any resulting legal costs. Expert testimony and confirmation data shall be supplied by the Contractor at no additional charge.</p> <p>5. Vendor shall choose ten (10) or more CHDC employees, with five (5) alternates, at random, to be drug tested monthly. A listing of CHDC employees will be provided to the vendor.</p>		
<p>E. Vendor must maintain SAMHSA certification at all times throughout the contracted term.</p>	<p>The Vendor must maintain one hundred percent (100%)</p>	<p>DHS reserves the right to impose penalties including but not limited to:</p>

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<p>Vendor must maintain a license to do business in the State of Arkansas and all licenses and certifications required for Vendor employees that administer drug testing. All licenses must be on file at the CHDC.</p>	<p>compliance with this item at all times throughout the term of the contract.</p>	<p>withholding payment on invoice until Vendor is in full compliance with this standard, a below standard Vendor Performance Report maintained in the Vendor's file, and contract termination.</p>
<p>F. 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>	<p>The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>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.</p>
<p>G. Transition Planning. 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 maintained in the vendor file. Final payment may be withheld from the vendor until the all elements of the transition are satisfied as determined by DHS.</p>

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

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

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

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

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