

1066.0.0 PERFORMANCE-BASED CONTRACTING POLICY (Ark. Code Ann. § 19-11-1010)

1066.1.0 Purpose

To insure that the quality of contract services is evaluated and, where necessary, proper remedies are implemented to assure efficient, effective, and responsive performance.

1066.2.0 Applicability

These rules apply to all professional and consultant service (PCS) contracts to which The Department of Human Services (DHS) is a party except as listed below:

- A. Sole source by law contracts in which the state is compelled as a result of court, state or federal mandate to award for services from a specific provider.
- B. PCS contracts that are executed as Emergency contracts.
- C. PCS contracts for Architectural and Engineering services that are awarded using Arkansas Building Authority (ABA) criteria.
- D. PCS contracts for \$10,000.00 or less (compensation and reimbursable).

NOTE: DHS strongly encourages the use of performance indicators for ALL PCS contracts regardless of the dollar value or procurement method unless the DHS division/office director determines performance evaluation would not be cost effective.

1066.3.0 Definitions

1066.3.1 Performance Based Standards – Benchmark objective(s), performance indicator(s), acceptable performance criteria, method(s) of evaluation of performance, and remedies.

1066.3.2 Benchmark Objective – A statement of intention with which actual achievement and results can be measured and compared. The benchmark objective should clearly describe what is to be achieved, when it is to be achieved, and the extent of the achievement.

1066.3.3 Performance Indicator – An identification of the specific activity(ies) required of the contractor to meet the benchmark objective(s). Each benchmark must have at least one performance indicator.

1066.3.4 Acceptable Performance – A statement defining the performance criteria for meeting or exceeding the performance indicator.

1066.3.5 Performance Evaluation – A method to assess the quality of the contractor’s service(s) by reference to all the performance indicators.

1066.3.6

Remedy – A statement of the correction or redress to be taken for unacceptable performance. Remedies may include, but are not limited to, one or more of the following:

- A. Requirement that the contractor submit an acceptable corrective action plan and that payment be delayed pending satisfactory implementation of the plan.
- B. Reduction in payment by an amount set by reference to a predetermined mathematical formula.
- C. Withholding of payment to contractor.

1066.4.0 Procedures to Design and Develop Performance Indicators

- 1066.4.1 These procedures apply to each new contract, or any contractual amendment which changes any contract provision except price, quantity, or duration.
- 1066.4.2 The division desirous of contracting should prepare proposed performance based standards and submit them to the Office of Chief Counsel (OCC) for review and approval.
- 1066.4.3 OCC will review the proposed performance based standards to assure that the standards will not violate any law or regulation applicable to DHS and that the contract terms will be enforceable. OCC will indicate approval in writing.
- 1066.4.4 Performance based standards must specify the benchmark objective(s), performance indicator(s), acceptable performance levels, and remedies for unacceptable performance.
- 1066.4.5 There is no need for legal review by OCC if the contracting division certifies the following:

<p>_____ This contract is identical to an existing contract which has received OCC approval except as to contractor,</p> <p style="text-align: center;">AND</p> <p>The existing approved performance terms are satisfactory and have accomplished the outcomes desired</p> <p style="text-align: center;">OR</p> <p>_____ The amendment changes only quantity, price, or duration</p> <p style="text-align: center;">AND</p> <p>The existing approved performance terms have previously been approved by OCC, are satisfactory, and have accomplished the outcomes desired.</p>
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- 1066.4.6 Performance based standards must be re-approved by OCC at least every seven (7) years.

1066.5.0 Performance Evaluation

1066.5.1 During the term of the contract, the division/office shall complete sufficient performance evaluation(s) to determine if the contractor's performance is satisfactory or unsatisfactory. Justification for the division/office's ultimate determination should be retained in the division/office files for a minimum of five years.

1066.5.2 As part of the end-of-year closeout procedures, the division/office shall:

- A. Review the performance of ALL contracts having performance indicators
- B. Notify the contractor(s) of the results of the performance evaluation and impose remedies for inadequate performance

1066.5.3 **The rules do not amend or replace any other contracting requirements including, but not limited to, submission of the Independent Contractor Checklist to determine the existence of an employer-employee relationship.**

1066.6.0 Originating Section/Department Contact

Office of Chief Counsel
Donaghey Plaza South
P. O. Box 1437, Slot S260
Little Rock, AR 72203-1437

Telephone: (501) 682-8934

Replacement Notation: This policy replaces DHS 1066 dated September 2, 2002.