



# PERFORMANCE MEASURES

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## Introduction

Hello, I'm Rachel Hoffman and with me is Liz Candler. We are contract analysts in VITA procurement. In this training, we are going to discuss the importance of including performance metrics and enforcement provisions, also referred to as performance measures or a service level agreement (SLA), in your information technology contracts.

Note: VITA supply chain management (SCM) and procurement are used interchangeably throughout this transcript.

## Including performance metrics and enforcement provisions in high-risk solicitations and contracts

You may have wondered why your agency needs to include performance metrics and enforcement provisions in your high-risk solicitations and contracts.

The Code of Virginia 2.2-4303.01 A-C requires VITA to ensure executive agency high-risk solicitations and contracts contain “clear and distinct” performance metrics and enforcement provisions including remedies in the case of non-performance. However, we recommend you include these service level metrics in all your contracts for the following reasons:

1. Performance metrics measure a supplier’s success in delivering goods and services per the terms of the contract by capturing data on a supplier’s performance at regular intervals, and comparing this data to the agreed-upon performance standards in your contract.



## Including performance metrics and enforcement provisions in high-risk solicitations and contracts

2. Enforcement provisions are designed to motivate the supplier to consistently meet or exceed these agreed upon performance standards.
3. Together, performance metrics and enforcement provisions are the framework of a strong contract and ensure a supplier's contractual obligations are:
  - Fulfilled on time, and
  - Promote reliability, quality, and consistency in the service being provided.

## High-risk code language

### § 2.2-4303.01(A) defines high-risk contracts:

"High-risk contract" – means any public contract with a state public body that is anticipated to either:

- i. Cost >\$10M over the initial term of the contract OR
- ii. Cost > \$5M over the initial term of the contract and meet one of the following criteria:
  - The goods or services that are the subject of the contract are being procured by two or more state bodies.
  - The anticipated term of the initial contract, excluding renewals, is greater than five years OR
  - The state public body procuring the goods or services has not procured similar goods or services within the past five years.

## High-risk code language

**§ 2.2-4303.01(B) requires that PRIOR to issuing a solicitation for a high-risk IT contract, a state public body shall submit such solicitation for review by:**

i. VITA and OAG

ii. Such reviews:

- Shall be completed within 30 business days
- Evaluate if the solicitation complies with applicable law and policy
- Evaluate the appropriateness of the solicitation terms and conditions.
- Ensure that such solicitations contain distinct and measurable performance metrics and clear enforcement provisions, including penalties or incentives to be used in the extent that contract performance metrics or other provisions are not met.

## High-risk code language

**§ 2.2-4303.01(C) requires that PRIOR to AWARD of a high-risk IT contract the contract shall be reviewed by:**

i. VITA and OAG

ii. Contract reviews shall:

- Be completed within 30 business days
- Evaluate if contract complies with applicable state law and policy
- Evaluate the legality and appropriateness of the contract's terms and conditions. Ensure that such contracts contain distinct and measurable performance metrics and clear enforcement provisions, including penalties or incentives to be used in the event that contract performance metrics or other provisions are not met.



## What are performance metrics and enforcement provisions?

Even though we've discussed why performance metrics and enforcement provisions are important, you may wonder, what are performance metrics and enforcement provisions?

1. Performance metrics are standards of service mutually agreed to by the agency and the supplier that serve as a baseline to measure a supplier's performance against the most critical aspects of the contract.
2. Enforcement provisions are contractual or financial provisions that incentivize the supplier to perform the specifications, and regularly adhere to, the performance measures outlined in the contract.



## How do you know if you have drafted “clear and distinct” performance metrics?

How do you know if you have drafted “clear and distinct” performance metrics? They will have the following characteristics:

- They are understandable;
- They are measurable;
- They are actionable (i.e., what corrective actions will be taken to improve performance);
- They are correlated (i.e., drive desired outcomes); and
- They are aligned with agency/business objectives.

## How do you know if you have drafted “clear and distinct” performance metrics?

As a best practice for “clear and distinct” performance measures, we recommend your contract include a Service Level Agreement (SLA) which defines the level of service expected from the supplier. The SLA lays out the performance metrics by which a service is measured, and the remedies to be collected should the agreed-upon service levels not be achieved.

The service level table displayed on slide eleven is in the VITA RFP template and is provided to agencies as a guide. An agency should include **their** performance measures, for the services to be provided, in the solicitation and require a supplier’s response as part of their proposal. A supplier’s edits to the service level table can be addressed during negotiations.

# SERVICE LEVEL AGREEMENT TABLE



Performance Standard	Measurement Criteria	Measurement Definition	Measurement Period	Target Service Level	Remedy
answer time	calls answered in 30 secs.	calls answered in 30 sec/total number of calls in a week	weekly	98%	\$1000 or 1% credit on the monthly service invoice for each week the target service level was not met
accuracy rate of incidents resolved in a call	number of misdiagnosed calls	misdiagnosed calls/total number of calls in a month	monthly	5%	\$500 or 1% credit on the monthly invoice
trouble ticket resolution	trouble tickets resolved in 1 hour	number of tickets resolved within 1 hour/total number of tickets resolved in a month	monthly	93%	\$500 or 1% credit on the monthly invoice
scheduled installations	scheduled installations completed within 3 business days	number of scheduled installations completed within 3 business days/total number of scheduled installations in a quarter	quarterly	97%	\$3000 or 3% credit on the monthly service invoice submitted in January, April, July, and October
abandoned calls	number of abandoned calls	number of abandoned calls/total number of calls in a week	weekly	3%	\$1000 or 1% credit on the monthly service invoice for each week the target service level was not met



## How do you know if you have drafted “clear and distinct” performance metrics?

Your performance measures should contain:

- A defined performance standard;
- Measurement criteria;
- Measurement definition or calculation;
- A measurement period or frequency;
- Target service level; and
- A remedy for noncompliance.



## How do you know if you have drafted “clear and distinct” enforcement provisions?

You may also wonder, how do I know if I have drafted “clear and distinct” enforcement provisions?

Clear and distinct enforcement provisions have the following characteristics:

- They incentivize the supplier;
- They include remedies; and
- They hold the supplier materially accountable.

## A best practice for “clear and distinct” enforcement provisions

As a best practice for “clear and distinct” enforcement provisions your contract should include:

1. Contractual requirements in which legal terms and conditions, such as termination for convenience or breach, contractually bind the supplier.
2. Financial requirements, such as legally sufficient financial credits or payments, which are paid to the procuring agency from the supplier in the case of deficient or non-performance. Examples of financial credits or payments include:
  - Financial remedies assigned and scaled to each performance metric;
  - Credit(s), in the form of a percentage, on the monthly invoice following a supplier’s lack of or deficient performance; and
  - Liquidated damages for critical services.



## How do performance metrics and enforcement provisions work together?

We've talked about what clear and distinct performance metrics and enforcement provisions look like, but how do they work together?

The table displayed on slide 15 shows how performance metrics and enforcement provisions work together to make the strongest contract (i.e., similarities and differences between performance measures and enforcement provisions + remedies).

## Similarities and differences table

Performance Metrics	Enforcement Provisions + Remedies	Performance Measures and Enforcement Provisions + Remedies
minimum standard(s) of service the supplier must meet or exceed	tangible consequences for the supplier in the case minimum standards of service are not met	required in all high risk it solicitations and contracts per 2.2-4303.01 of the Code of Virginia
quantify supplier's progress towards the goals of the contract/agreement	quantify financial or contractual incentives to consistently meet contract/agreement goals	maximize the value of the procurement for the commonwealth and its customers
define, in clear terms, what is being measured, the minimum standard of service delivery, and frequency with which the standards will be evaluated	reasonable and appropriate financial or contractual provisions tied to each performance metric to be enacted in the case of poor or non-performance by the supplier	clearly identify the agency's expectations of the supplier, including under what circumstances the agency can apply enforcement provisions and collect remedies
analyzed and reported on at regular intervals to determine if enforcement provisions need to be applied and/or remedies need to be collected	applied and collected in the case of poor or deficient supplier performance during a given performance period	provide parameters of supplier accountability to perform the specifications of the contract/agreement



## Performance measure examples

To further aid your understanding, we have pulled examples of performance measures that are clear and distinct versus metrics that are unclear or missing information.

## Performance measure example one

In example one on slide 18, we have a performance metric for a mobile application. This metric is compliant for the following reasons:

1. The performance standard is defined: mobile application – uptime availability.
2. It is clear what is being measured: mobile application availability.
3. The definition provides the formula for how compliance will be measured:  $\text{number of seconds the mobile app is available to end users} / (\text{total number of seconds the mobile app is monitored})$ .
4. The measurement period is defined and the frequency is appropriate which, in our example, is weekly.



## Performance measure example one

5. The target service level of 99.9% is included and provides for any exceptions such as scheduled and preapproved maintenance.
6. The remedies are distinct and detail the percentage to be credited in the event the SLA is missed which, in our example, is a 3% credit on the total monthly service fee.

Performance Standard	Measurement	Definition	Measurement Period	Target Service Level	Remedy
<b>SLAs applicable from notice to proceed to service commencement</b>					
critical path milestone timely completion	actual completion date	(actual completion milestone date)-(planned milestone completion according to approved, baseline schedule)	weekly	100%	5% of associated milestone payment
<b>SLAs applicable from service commencement to contract termination</b>					
mobile application – uptime availability	mobile app availability	(number of seconds mobile app available to end users)/(total number of seconds the app is monitored)	weekly	99.9%  not including scheduled & preapproved maintenance as defined in section 9 of the contract	3% of the total monthly service fee
mobile application – break/fix resolution	mobile app availability	(date & time stamp of issue resolution)-(date & time stamp of incident report by agency)	weekly	4 hour resolution	1% of the total monthly service fee per hour of delay up to 3% max of the total monthly service fee
website – uptime availability	website availability	(number of seconds website available to end users)/(total number of seconds the website is monitored)	weekly	99.9%  not including scheduled & preapproved maintenance as defined in section 9 of the contract	3% of the total monthly service fee
website – break/fix resolution	website availability	(date & time stamp of issue resolution)-(date & time stamp of incident report by agency)	weekly	4 hour resolution	1% of the total monthly service fee per hour of delay up to 3% max of the total monthly service fee

## Performance measure example two

In example two on slide 20, we have a non-compliant SLA for the following reasons:

1. The performance standards are not explicit enough, and there are no specific indicators of success for most of the SLA.
  - For example, the agency has identified “uptime” as a performance standard, and a measurement of “system availability”, but there is no definition of uptime or system availability. This will affect the agency’s ability to successfully collect on the outlined remedies.
2. The performance remedies are not clearly defined.
3. In the right hand column, you can see that the agency has outlined the credit amounts for each metric in the case of deficient or non-performance; however, it is unclear when or how these remedies will be collected from the supplier.

Performance Standard	Measurement	Measurement Period	% Level	Remedies
uptime	system availability	monthly	99%	85% credit
incident response time	within 1hr of system issue being reported	monthly	95%	75% credit
resolve p1 items	1 hr. from receipt of call	monthly	95%	30% credit
resolve p2 items	2 hr. from receipt of call	monthly	90%	15% credit
resolve p3 items	3 hr. from receipt of call	monthly	90%	5% credit
defect rates	production failures such as: coding errors; incomplete backups and restores; missed deadlines	quarterly	5%	20% credit
security	anti-virus updates and patching	quarterly	100%	20% credit
business results	agency KPI's are met	quarterly	95%	10% credit
updates	all software versions are current	annually	95%	5%credit



## Performance measure example three

In example three on slide 22, we have performance metrics and associated remedies on the timeframe it takes to resolve system incidents based on the severity level of the issue. This SLA is compliant for the following reasons:

1. The performance standard is defined: incident resolution time with a severity rating of 1 must be resolved in two hours or less. Additionally, a severity rating of 1 is defined as a critical priority.
2. It is clear what is being measured: the % of severity 1 incidents resolved within two hours or less.
3. The definition provides the formula for how compliance will be measured:  $(\text{total \# of severity 1 incidents resolved within two hours or less}) / (\text{the total number of resolved severity 1 incidents})$ .
4. The measurement period is defined and the frequency is appropriate which, in our example, is monthly.



## Performance measure example three

5. The supplier's expected target service level of 98% is included.
6. The remedies are distinct and detail the percentage to be credited in the event the SLA is missed which, in our example, is a 5% credit on the total monthly service fee.

Performance Standard	Measurement	Definition	Measurement Period	Target Service Level	Remedy
<p>incident resolution time – severity 1 (&lt;= 2 hours)</p> <p>sev. 1 incident = critical priority. critical production issue that severely impacts the use of the service.</p>	<p>% of incidents resolved within the 2 hour timeframe.</p> <p>note: if an incident is escalated to sev. 1, then the resolution time measurement restarts upon escalation to sev. 1.</p>	(total severity 1 incidents resolved within 2 hours)/(total resolved severity 1 incidents)	monthly	98.00%	monetary credit of 5% on the monthly service invoice
<p>incident resolution time – severity 2 (&lt;= 4 hours)</p> <p>sev. 2 incident = high priority. critical situation where functionality is impacted or customer experience is seriously degraded.</p>	<p>% of incidents resolved within the 4 hour timeframe.</p> <p>note: if an incident is escalated to sev. 2, then the resolution time measurement restarts upon escalation to sev. 2.</p>	(total severity 2 incidents resolved within 4 hours)/(total resolved severity 2 incidents)	monthly	97.00%	monetary credit of 3% on the monthly service invoice
<p>incident resolution time – severity 3 (&lt;= 16 hours)</p> <p>sev. 3 incident = medium priority. a partial loss of service with a medium-to-low impact on the business. business is still able to function.</p>	<p>% of incidents resolved within the 16 hour timeframe.</p> <p>note: if an incident is escalated to sev. 3, then the resolution time measurement restarts upon escalation to sev. 3.</p>	(total severity 3 incidents resolved within 16 hours)/(total resolved severity 3 incidents)	monthly	95.00%	monetary credit of 1% on the monthly service invoice
<p>incident resolution time – severity 4 (&lt;=72 hours)</p> <p>sev. 4 incident = low priority. performance of systems is delayed but still functioning. bug affects a small number of users.</p>	<p>% of incidents resolved within the 72 hour timeframe.</p>	(total severity 4 incidents resolved within 72 hours)/(total resolved severity 4 incidents)	monthly	93.00%	monetary credit of 1% on the monthly service invoice

## Performance measure example four

In our last example on slide 24, we have an SLA that is non-compliant for the following reasons:

1. A review of supplier compliance with performance standards should be regular and consistent.
  - In this SLA, the agency has provided for a review of the SLA's once per fiscal year, but ideally, the agency and the supplier would evaluate the SLAs more frequently, such as monthly or quarterly, to determine if remedies need to be collected.
2. There is not a description of the standards identified.
  - For example, the agency has identified "unscheduled downtime" as an SLA; however, there is no definition of what constitutes unscheduled downtime, or how unscheduled downtime will be measured.
3. There are no minimum standards of service listed, which puts the supplier at an advantage to provide or negotiate service levels that do not necessarily maximize the value of the investment.



To be effective on go-live

Assumptions:

1. Application is essential to patient safety; zero tolerance for failure or disruption.
2. SLA performance standards are valid from the effective date outlined herein and is valid until further notice. The SLA performance standards should be reviewed at a minimum once per fiscal year; however, in lieu of a review during any period specified, the current standards at the time of the effective date will remain in effect.

Performance Standard	Measurement	Measurement Period	% Level	Remedies
unscheduled downtime				
planned downtime per month				
recovery time objectives for internal disruptions				
recovery time objectives for external disruptions				
incident response time				
uptime guarantees or commitment				
ticket resolution				
turnaround time of root cause analysis				
remedies for SLA failures				
frequency of deliverance on SLA audit results				
How far in advance of release are all defects resolved?				
number of reopened tickets				



## Closing

Thank you for viewing this training session on performance metrics and enforcement provisions. We hope you found this information informative and useful.

If you have questions on the content presented or performance measures in general, you may contact us directly or email [scminfo@vita.virginia.gov](mailto:scminfo@vita.virginia.gov).

## Additional resources

- VITA's IT procurement manual, chapter 30, "High-Risk IT Solicitations and Contracts" at <https://www.vita.virginia.gov/procurement/it-procurement-manual/chapter-30--high-risk-it--solicitations-and-contracts/>
- VITA's IT procurement manual, chapter 21, "Performance Based Contracting and Service Level Agreements" at <https://www.vita.virginia.gov/procurement/it-procurement-manual/chapter-21--performance-based-contracting-and-service-level-agreements/>
- The high-risk solicitations and contracts webpage at <https://www.vita.virginia.gov/procurement/high-risk-contracts-overview/>
- The performance metrics tool located at <https://www.vita.virginia.gov/media/vitavirginiagov/supply-chain/pdf/Performance-Metrics-Tool.pdf>



## Additional resources

- The training video “VITA Review Process” located on the procurement tab, of the VITA website, under the training option.