



health

Department:
Health
REPUBLIC OF SOUTH AFRICA



National VMMC programme | Guidance note for RT35 SLA

Version 1 (August 2020)

To: Provincial or District Department of Health (PDoH/ DDoH)

From: National Department of Health (NDoH)

Date: 13 August 2020

Re: **Guidance note for RT35 SLA finalisation**


CONTRACTING

When contracting for the government through government bids, contracts and orders, there are certain general conditions/best practices that need to be adhered to post awarding the contract. This is to ensure that all parties involved in the contracting process are familiar with the rights and obligations of all the parties involved in doing business with the government.


It is important to note that general conditions of contract will form part of all bid documents and they may not be amended. Apart from the general conditions of a contract, there are also special conditions of contract (SCC) relevant to a specific bid that should be enforced after the contract has been awarded. The SCC should be compiled separately for every bid. SCC are used to supplement the general conditions of a contract. Whenever there is a conflict regarding the contract, the provisions in the SCC will prevail.

A checklist of what needs to be in place once the contract has been awarded are highlighted below.

Figure 1: Contract Checklist¹

	Once the contract has been awarded, the following will be in place:
	1. Contract ID is assigned
	2. Contract classification for management purposes has been done
	3. Budget, implementation and in-year monitoring structure in place
Contract oversight structures	
	4. Supplier / buyer / stakeholder induction completed
	5. Contract manager appointed
	6. Steering group and other advisory and oversight structures in place
	7. Handover from bid and award stage to contract management
	8. Contract management plan in place
Contract documentation system	
	9. Original signed hard copy contract on file
	10. Electronic copy of original signed contract on file (PDF format)
	11. Key information and trigger points recorded in the contract management system

¹ Source: National Treasury (2010) *Contract Management Guideline*

	Once the contract has been awarded, the following will be in place:
Appropriate supplier relationship structures	
	12. Roles and responsibilities of supplier, contract owner, and contract manager
	13. Regular meeting dates set (monthly / quarterly / annually)
Performance management systems	
	14. Performance management processes and metrics agreed with stakeholders prior to contract commencement
	15. Performance management metrics consistent with institution's strategic objectives
	16. Performance reviews set (monthly / quarterly / annually) and documentation defined
Risk management plan	
	17. Risk identification and assessment completed
	18. Potential risk response documented
	19. Potential risk response documented
Other processes understood by all parties	
	20. Payment or collection processes
	21. Incentives, penalties (remedial action) processes

THE SUPPLIER AND THE PURCHASER

There are certain supplier guidelines that need to be followed when the contract has been awarded to a certain supplier²³: In this specific instance, the respective Provincial and District Department of Health are the purchasers of the service, while the VMMC service provider is the supplier.

- The supplier (VMMC service provider) is not permitted, without the purchaser’s (Provincial and District Department of Health) prior written consent, to disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.
- The supplier is not permitted, without the purchaser’s prior written consent, to make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser if so required by the purchaser.



A **Service Level Agreement (SLA)** between a supplier and purchaser notes certain requirements for the agreement/contract to be valid. The requirements are highlighted in the table below.

Table 1: Checklist requirements for RT35 SLA⁴

✓	Requirements for the RT35 SLA
	The SLA/contract must be signed in two originals. It constitutes the sole record of the agreement between the parties in regard to the subject matter hereof. Each party to retain one of the two signed originals.
	No party shall be bound by any representation, expressed or implied, warranties, promises or the like, not recorded within the SLA/contract, incorporated as an Annexure or otherwise reduced to writing and signed by or on behalf of the parties.
	The SLA/contract must supersede and replace prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter of the SLA/contract.
	No relaxation of the terms of the SLA/contract and no indulgence which one party may grant to the other will in any way operate as a restriction against the former party or be deemed to be a waiver of its rights, or in any other way limit, alter or prejudice those rights.
	Each person signing the SLA/contract for and on behalf of a party hereby warrants in his official capacity that he is duly authorized by such party to do so.

² Parliament of South Africa (2010). *Conditions of a contract*.

³ Party who the contract was awarded to

⁴ Source: Service Level Agreement: The Government of the Republic of South Africa through its PDoH

In the context of VMMC, a **service-level agreement (SLA)** defines the level of service expected by the province/district from a service provider. It lays out:



- (a) the metrics by which that service is measured,
- (b) the remedies or penalties, if any, should the agreed-on service levels not be achieved.

The SLA includes the components noted in the table below.

Table 2: Components of SLA⁵

SLA Components	Brief Description
The purpose and objectives of the SLA	<p>The purpose of the SLA is to establish the VMMC service delivery arrangement between the PDoH and service delivery partner name by ensuring that the objectives of the NDoH and PDoH are met.</p> <p>The main objective of the SLA is to provide VMMC services in District name under a direct contract between the province name DoH and service delivery partner name.</p>
Detailed description of services and products to be delivered	A clear and detailed description of the services and products to be delivered by the service provider that is hired by the DoH.
Payment of the service	All payments due to the service provider will be made at a specific date according to the invoices submitted by the service delivery partner name. Reconciliation of all the invoices should occur at the close of the agreement.
Duration	This involves a clear date of commencement of the SLA and date of terminations. The PDoH reserves the right to extend the SLA with the service delivery partner on rates and terms that the parties agree upon.
Appointment	This is when the PDoH appoints a service delivery partner. With the signing of the SLA, the service provider accepts such appointment to provide the services outlined within the agreement.
Applicability of other documents	In an instance when there is a conflict between the provisions of any of the documents and the SLA, the provisions within the SLA shall take precedence over the provisions of such other documents.

⁵ Source: Service Level Agreement: The Government of the Republic of South Africa through its PDoH

Obligations of the service provider	This entails the services and products that the service provider agrees to undertake within the conditions stipulated in the SLA.
Roles and responsibilities of the PDoH	The PDoH has to manage the interface between the structures in the PDoH and the service delivery partner. The PDoH has to monitor the service deliverables, outputs, and the progress of service delivery as noted in the SLA.
Service level management and reporting	The Service Provider is required to present an inception report, after an initial meeting with the PDoH, detailing the work plan, key activities, and timelines for the work (to be agreed upon with the PDoH). Quarterly and performance reports which provide a summary of operations and progress, including challenges, strengths, and recommendations must be submitted to the MMC Program of the NDoH and PDoH.
Terms of payment, price adjustment and invoices	This details the terms of payment to the service provider, any adjustments of the terms of payment.
Performance and penalties	The service delivery partner agrees to perform the services in accordance with the service standards outlined in the SLA. The PDoH is entitled to impose any penalties for late or defective performance according to the agreed terms.
Assignment, cession and delegation	Assignment, cession and/or delegation of any rights and obligations respectively under this SLA to any third party shall be dealt with in terms of the PDoH policy. The SLA is also binding on the successors in title, assignees, and administrators of the respective parties.
Intellectual property (IP)	IP created under the SLA belongs to the PDoH. This IP clause shall survive until termination of the SLA.
Confidentiality	The parties agree to keep confidential and not to disclose to third parties any information provided by either party or as a witness by that party or its employees in the course of performance of services under the SLA unless the party concerned has received prior written consent of the other party to make such disclosure.
Force majeure	Failure of any part of the parties to fulfill any of its obligations under the SLA due to force majeure shall be dealt with.

Breach and termination	This is in an event where either party breaching any provision of the Agreement (“the defaulting party”) and failing to remedy such breach within a specified time. The aggrieved party shall be entitled to either: cancel the agreement; or seeking specific performance of the defaulting party’s obligation in terms of the Agreement. The aggrieved party has a right to claim such damages.
Settlement of disputes	Any disputes arising from the interpretation, application or implementation of the SLA shall be resolved by way of negation and the parties to the dispute shall attempt in good faith to come to an agreement in relation to the disputed matter, failing which the parties agree to the fast-track dispute mechanism, failing which an arbitrator shall be appointed by agreement, whose decision shall be final and binding.
Amendment of this SLA	Any variation, addition, or amendment of the SLA, shall be dealt with by the parties involved.
Indemnity	The Service Provider hereby indemnifies and holds the PDoH harmless against any claims of any nature whatsoever and however arising out of any respective individual willful or negligent act or omission by the Service Provider.
Fraud and corruption	Should any party of the SLA and/or any third party involved directly or indirectly in the SLA, has performed or contemplated performing an act of fraud or corruption, the SLA shall terminate immediately, and the innocent party shall be entitled to invoke the remedies available to it contained in the SLA as well as to proceed against any and all individuals in their personal capacity who performed the corrupt act. This clause shall survive until the termination of the SLA.
Audits and inspections	The parties agree that PDoH may, through their internal or external auditor - Undertake a complete audit of service delivery partner’s financial records pertaining to this program to confirm the accuracy of transactions, and/or the inflow of payments to or from various sources and calculation of reserves.
Domicilia and notices	The service delivery partner has to state who it chooses as its <i>domicilia citandi et executandi</i> for all purposes arising from the SLA.
Governing law	The SLA is governed by the law of the Republic of South Africa.

<p>Authority</p>	<p>Each person signing the SLA for and on behalf of a party hereby warrants in their official capacity that they are duly authorised by such party to do so.</p>
<p>Counterpart signing of the SLA</p>	<p>The parties agree that the SLA may be signed at different times and in different places, and in copy provided the content of the SLA and signatures are exact replicas (counterparts) of the originals when put together. The signed SLA's when put together shall constitute a binding agreement between the parties.</p>


Self-reflection after working through the SLA components:

1. The sections I should especially take note of are: _____
2. The sections I do not fully understand yet: _____

SLA CLAUSES TO COMPLETE

There are a number of specific clauses that need to be completed in the VMMC provincial/district SLA, for this to be considered an executed SLA. These are listed in the table below.

Table 3: Clauses requiring input to complete SLA

Clause No.	Clause	
4.3.1	service delivery partner name acknowledges and agrees that PDoH may, in consultation with service delivery partner name and with reasonable cause (consistent and significant failure to meet program targets or Program QA standards and the minimum package of services for VMMC or incurring a high number of AEs exceeding 2% per site per quarter) amend and/or adjust the amount, time and/or conditions of payment of any of the funds granted to service delivery partner name under the SLA. PDoH may not adjust downwards the agreed amount per circumcision as outlined in National Treasury Contract RT35-2019 signed on _____.	
4.3.2	Subject to the terms and conditions of this Agreement and in consideration for service delivery partner name compliance with its obligations in terms of this Agreement, PDoH hereby approve an amount of _____(in words) per procedure on a monthly basis for the period [ENTER DATE] and will continue until [ENTER DATE] in accordance with the budget.	
6.1	This SLA shall notwithstanding the date of signature become effective on the date of commencement being [ENTER DATE] and shall endure for a period of 3 years until [ENTER DATE].	
12.1	service delivery partner name will be offered a payment of _____ per circumcision, subject to clause 13, as per negotiations with the Provincial Department of Health.	
12.2	The approved payment amount in this Agreement shall be adjusted by CPI on the 1st and 2nd anniversary (i.e. [ENTER DATES]) of this Agreement.	
14.1	Assignment, cession and/or delegation of any rights and obligations respectively under this SLA to any third party shall be dealt with in terms of the PDoH policy of _____	
17	Failure of any part of the parties to fulfill any of its obligations under this SLA due to force majeure shall be dealt with in terms of _____.	
20	Any variation, addition or amendment of this SLA, shall be dealt with in terms of _____.	
25	DOMICILIA AND NOTICES	