

**Example Scope of Work Writing Guide for A&E Consultant Contracts
(courtesy of ODOT, modified for Caltrans)**

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General

The Scope of Work ("SOW") is the heart of a Contract when procuring services. The SOW provides the detailed description of the work to be done and sets out most of the mutual expectations and promises between Local Agencies and the other party to the Contract. The SOW is read and interpreted by many people with diverse backgrounds such as engineers, lawyers, economists, land use planners, politicians and contract specialists. It is very important that the SOW be understood not only by the writers of the SOW, but by the readers. At minimum, the SOW must meet a basic "Fitness for Use" standard, meaning it is written clearly enough and with sufficient detail to obtain services and deliverables that will meet the intended purpose.

The SOW is subject to contract law. When major disputes go to court, any ambiguity in the SOW will normally be interpreted in favor of the Consultant. Further, ambiguous SOWs can lead to unnecessary protests, unsatisfactory performance, delays, disputes, and increased costs. As the procurer of services, it is in Local Agencies best interest to clearly communicate FHWA and State requirements and expectations for completion of services. In all cases, the SOW must be in writing and clear enough to protect Local Agencies' interests; and must provide a meaningful measure of performance so both Local Agencies and the other party will know when the work is satisfactorily completed.

Before developing an SOW to outsource a project, Local Agencies must confirm the work cannot be completed with internal staff resources.

Scope of Work

The Scope of Work is the range of services that are to be performed and the limit to which these services can be changed.

When soliciting for services, a description of the scope of work usually appears as a scope statement in the solicitation document (e.g. Request for Proposal or Request for Qualification), under the heading of "Intent," "Purpose," "Overview," or "Background." The text of the scope statement usually describes the general type of services, provides an overview of the performance outcomes expected by the agencies, and may identify some of the technical requirements. The general scope statement provides enough information so that prospective Consultants can (1) understand what services Local Agencies are seeking, (2) decide if they

are qualified and capable of performing the services required, and (3) decide if they wish to compete for the contract(s).

When a Contract is awarded through a solicitation process, the scope of work is usually communicated in more detail in the Contract than in the solicitation document (i.e. Request for Proposal or Invitation to Bid). The scope of work described in the Contract Scope of Work must be consistent with the scope of work described in the solicitation document.

Detailed Contract Scope of Work

The detailed Contract Scope of Work (SOW) describes in detail the work to be performed and agency's performance expectations. The SOW is the primary means through which a Local Agency communicates performance obligations, duties, and communicates Local Agency's objectives related to the cost and schedule for completion of services. The SOW must be clear enough for the parties to understand their obligations and duties. A clear, concise SOW helps create a Contract that is legally enforceable should performance issues arise during the Contract period.

General Guidelines for Writing an SOW

Before writing an SOW with detailed tasks and deliverables, complete an analysis of the project to determine what specific services are required and what outcomes are needed to define the SOW.

When writing an SOW, it is important to write for the potential audience of your document. Focus your writing on what is needed. Determine what your requirements are from the start; do not leave them undefined or say, "at the direction of Local Agency."

The SOW should be clear and concise - every word has meaning; no word should be included if it does not serve a purpose.

Consider the following questions when compiling information for the initial draft of the SOW:

- What is the purpose of the service?
- What will the work consist of?
- Which stakeholders and technical staff resources should be involved in SOW development and review?
- Who is responsible for performing specific tasks?
- Have any reports, documents, or other elements related to the project already been completed by Local Agency or other consultants?
- What are the deliverables? When are they due? At what quality level (draft or final) and what level of detail must they be submitted? To whom will they be delivered?
- Are there any Local Agencies, Federal, or industry standards that dictate how services or deliverables must be completed?
- Are the services reoccurring?
- Should the contract services be done using a phased development approach?
- What will a successful outcome be?

- What problems might be encountered? How should they be resolved?
- Are there any special requirements such as travel, mandatory credentials, or minimum experience levels?

Elements of A&E and Related Services SOWs

SOWs for A&E and Related Services must, at minimum, include the following sections:

- **Contact Information:** Include table identifying Local Agencies and Consultant's project managers and/or contract administrators and their contact information.
- **Project Description and Overview of Services;** this includes:
 - **Project Description, location and Background** – Provide a broad description of the project and why the work in the SOW is being pursued. Identify other projects this work may be related to (such as a construction project, if applicable) and funding sources for this contract. Identify a problem statement (if applicable) and the objectives Local Agency plans to achieve by outsourcing this work.
 - **Scope of Services** – Briefly state what the SOW does and does not cover. It should not include specific task details or a description of deliverable products. The 'scope' paragraph defines the breadth and limitations of the work to be done by the Consultant.
- **Applicable Standards and General Requirements** – Include this section if there are any applicable reference standards, manuals, permits, special certification or license requirements, etc., that are not already incorporated in the SOW from elsewhere in the contract.
- **Tasks and Deliverables** – This section must include clearly defined tasks and measurable deliverables. The tasks must indicate what needs to be done and what needs to be produced. Deliverables must correlate with all items produced in task; (i.e.; if Consultant is conducting traffic analysis, there should be a traffic analysis report listed as a deliverable. Likewise, if there is a traffic analysis report listed as a deliverable, there should be something in the associated task about conducting traffic analysis. Identify if deliverable is hard copy, electronic, or both, and any format, quantity, or compatibility requirements.
- **Contingency Tasks** – Contingency tasks are common for A&E and Related Services projects. Contingency tasks are typically included in an SOW when there are unknowns or elements of a project that have not been scoped sufficiently to allow for negotiation of a fair price. If there are significant unknowns prior to beginning the work, the Consultant's estimate will include costs for worst case scenarios, even though they may never come to pass. To address this problem, use of contingency tasks should be considered whenever there is a work task that can be clearly defined and budgeted, but it is not known during negotiations if the task will be necessary. The dollar amount for each contingency task must be identified separately from the overall amount for non-contingency tasks. For example, a Contract could include a contingency task for Consultant to participate in additional project meetings that might be needed during the duration of the project. The contingency task describes all the services to be performed and deliverables to be completed if the additional meetings are needed. See *Using Contingency Tasks* below.
- **Delivery Schedule (and Milestones, if any)** Identify due dates for deliverables or completion of tasks. Milestone dates should be identified for any critical path items that could jeopardize the overall project schedule (e.g., date permits must be obtained to

maintain bid let schedule).

- **Compensation for Services:** When there is monetary compensation for services, identify the applicable method of compensation and the documentation required to enable payment for the services. For some Contracts, compensation information is included in the Contract's Terms & Conditions section instead of in the SOW.
- **Definitions & Acronyms** - Include in this section definitions of terms not generally understood and acronyms that are used in the SOW. Use defined terms and acronyms consistently throughout the SOW.

Deliverables

- "Deliverables" are the outcome of the services that are provided and are often used as the basis for evaluating Consultant's performance and authorizing payment to Consultant. Best practice is to define deliverables for each task in the SOW that are tangible and measurable.
- If it is not feasible to define all service outcomes, then describe the detailed process (especially the Consultant's role) that must be followed to arrive at decisions and identify who is authorized to make the decisions. For example, the SOW may include a task for Consultant to conduct a study of alternatives and submit recommendations. The task should specify that Consultant cannot proceed with the remaining tasks in the Contract until the Local Agency selects a preferred alternative for the Consultant to develop and implement.
- When compiling information for the draft SOW, it is helpful to list your assumptions and expectations about Consultant performance. This can highlight key obligations that might have gone unwritten. Validate your assumptions with subject matter experts. Listing and validating your assumptions may bring out things that you thought to be true but may later turn out different. If it turns out additional Consultant effort is needed, then a Contract amendment may need to be written to authorize the additional work and add money to the Contract.

Level of Specificity

- A common question is: "How specific does the SOW need to be?" One rule of thumb is the SOW could be handed to two different Consultants and the quality of services and deliverables would be about the same. While a vague or technically insufficient SOW may pass "legal sufficiency" review, it increases the risks of receiving services that do not meet expectations. Additionally, a vague or general SOW may lead to extra costs and schedule delays. A good SOW reduces risk on both parties, Local Agency and Consultant.
- Some people confuse specificity with wordiness. Describing required services or products with too many words can lead to contradictions or confusion, or simple redundancy. Avoid this problem by following the guideline about making every word count.
- Another way to save time and words is to incorporate and rely on "standards." The standards may be explicit and detailed, as in many of the Caltrans design and construction manuals. They may be a series of standard procedures that are guided by laws and regulations and standard forms; for example, the processes involved in gaining approval for environmental permits. Standards may even be procedures and levels of performance that are customary within an industry.

Using Contingency Tasks

When there are services that may or may not be required to complete the project, it is acceptable to write “contingency tasks” into an SOW. Contingency tasks must be tightly defined and written as to the subject, When there are services that may or may not be required to complete the project, it is acceptable to write “contingency tasks” into an SOW. Contingency tasks must be tightly defined and written as to the subject, extent, dollar amount, and the process for controlling how the contingency will be administered.

If during performance of the Contract it is determined that the contingency tasks are needed, Local Agencies issue a written Notice to Proceed to authorize Consultant to work on the contingency task. It is quicker to authorize a contingency task than it is to amend the Contract to add the additional services once it is determined they are needed. The cost of contingency tasks is kept separate from all non-contingency costs but must be included in the Contract total (Not-to-Exceed total). If a contingency task is not authorized, these separate funds cannot be spent. Contingency funds can only be transferred to non-contingency tasks if the Contract is amended to reallocate the funds.

For example, a Contract could include a contingency task for Consultant to participate in additional project meetings that might be needed during the duration of the project. The contingency task describes all the services to be performed and deliverables to be completed if the additional meetings are needed. Consultant only performs services under the contingency task if they have been specifically authorized in a written Notice to Proceed issued by Local Agencies.

SOW Review Meeting and Revisions

To increase the likelihood of a successful project outcome, it is essential to conduct an SOW review/discussion meeting with the selected Consultant prior to executing the Contract. (For Contracts awarded without price competition as the primary factor, the review meeting occurs before requesting a Breakdown of Costs ("BOC") and conducting negotiations for the Contract.)

Review and discuss Consultant tasks and deliverables, appropriate classifications, delivery schedule and other contract requirements. Invite appropriate technical staff to participate in the discussions (this meeting may be a one-on-one discussion in person or over the phone on smaller discipline-specific contracts).

Identify any items provided or tasks that will be completed by Local Agency.

Revise SOW as necessary based on discussion at the SOW meeting. Any expectations of the Consultant or items that were promised or agreed to by either party must be captured in the Contract (the State doesn't recognize verbal agreements). This may entail several iterations back and forth via email between Local Agency and Consultant.

Ensure appropriate stakeholders review final SOW.

Style Guide for SOW Language

Use Unambiguous Language

Ambiguous language means words that have more than one interpretation – uncertain or indefinite. Words or phrases such as "assist", "work with", "help", "best efforts", "reasonable", "acceptable", "necessary", "good", "they", and "we" should be avoided.

Instead, choose words and phrases that clearly define responsibilities, intentions and expectations. How will Consultant “assist”? What are the minimum “acceptable” standards required? Who will determine when something is “necessary”?

The interpretation each party (Local Agency and Consultant) has about SOW language may not match or may change over time. New people assigned to the Contract may bring different interpretations. These situations may cause problems during contract administration and can be avoided by creating SOW language that is clear and concise.

Proper Use of Acronyms

SOW writing is technical writing and sometimes uncommon names, or expressions and their acronyms must be used. When using acronyms assume that your audience is not a subject matter expert.

For all acronyms, spell out the name or expression the first time it is used in the SOW and then identify the acronym surrounded by parentheses. Once defined, the acronym can be used throughout the rest of the SOW.

If there are several different acronyms used throughout the SOW, you may include a table of acronyms and definitions at the beginning or end of the SOW. Some SOW templates already have an acronym table that must be updated to include any new acronyms you add to the SOW.

Use Consistent Terminology

It is important to use consistent terminology throughout the SOW. When referring to a party of the Contract in the SOW, use the term defined in the Contract for that party. When referring to a specific task or deliverable in the SOW, use the same term or phrase that was used to define the task or deliverable. For instance, we would not define a deliverable as "Technical Memorandum #1" and then include several references throughout the SOW to “the report”. Instead we would consistently use the term Technical Memorandum #1 when referring to that deliverable unless it is absolutely clear from the context of the task that “the report” is referring to Technical Memorandum #1.

“Agency”, “Contractor”, “Consultant”, “Provider”

When referring to the parties of the SOW, the rule of thumb is to use the same capitalized words used to refer to the parties in the Contract’s Terms and Conditions. **Consistency of use throughout the Contract is the objective.**

Agreements identify Consultant and the other entity is referred to as “City” or “County”.

Spell these words with a capital letter and avoid using “the” in front (Example: Consultant, instead of **the** Consultant; Agency, instead of **the** Agency).

Use Active Voice Sentence Structure

Active and passive voice each convey action. They differ in how they convey the action through grammatical structure. **Always use active voice when drafting an SOW.** Passive-voice sentences oftentimes create ambiguity and may be interpreted as indecisive or evasive.

Active-voice sentences usually have three basic components: The actor – the person or thing performing the action

The action – the verb

The receiver – the person or thing receiving the action

Use Active Voice

When the structure of the sentence has the actor in front of the action, the sentence is in the active voice.

Avoid Passive Voice

Example: Consultant shall prepare an environmental report. Actor (subject)
action (verb) receiver (noun)

When the structure of the sentence has the receiver in front of the action, the sentence is in passive voice. If a sentence includes the phrase “will be” or “shall be” it is very likely passive voice.

Example: An environmental report will be completed.

Assign Responsibility

Always assign responsibility and requirements for a task in a clear and direct manner using active voice sentence structure and appropriate terms of obligation:

Consultant shall...

Always use “shall” when you expect the Consultant to perform a certain task. The term “shall” is the customary Contract language which clearly means the Consultant must perform the obligations during the term of the Contract. An example would be *“Consultant shall prepare a technical memorandum to report the findings from the study.”*

Consultant may...

Use “may” or “should” only when you don’t expect the Consultant to perform a certain task. “May” is only used for informational purposes in a SOW. It lacks any legal substance for enforcement of an obligation in the Contract. An example would be *“Consultant may include a chemical breakdown of soil samples in the report.”*

Local Agency will...

“Will” usually signifies an action at some undefined point in the future, in the Contract, or perhaps in another Contract. For instance, “Local Agency will coordinate the lab tests.” While this sentence does show obligation, it may be interpreted to mean an action in the future without clearly defining when the action needs to happen.

The report must...

“Must” is to address requirements for inanimate objects or processes. For instance, we would not say, “The Report shall include a table of contents.” Instead, we would say, “The Report must include a table of contents.” We would not say, “the facilitated meeting shall strive to develop consensus.” Instead, we would say, “Consultant shall facilitate the meeting with the objective of developing consensus among the participants.” For inanimate subjects, it is

suggested that you either use “must,” or re-write the sentence to show who is the actor.

Consultant must...

An appropriate use of “Consultant must” is when something needs to happen before another action can happen. This indicates that the action is required to bring about a consequence. When determining if you should use the word “must,” ask yourself if the party “has to do X before Y will happen.” For example, “Before proceeding with completion of final report, Consultant must obtain Local Agency approval of draft report.

A well-written SOW is the key tool in avoiding contractual disputes and performance problems.

Additional guidance for drafting legal documents is available at the following Website:

<http://www.archives.gov/federal-register/write/legal-docs/clear-writing.html>

Definitions

A&E – Architectural and Engineering

Consultant - means the legal or commercial entity with whom Local Agency enters a Contract. “Consultant” has the same meaning as “Provider”; however, “Consultant” is normally used for Architectural & Engineering, Land Surveying, and Related Services.

Detailed Contract Scope of Work. This type includes tasks with a detailed description of what must be accomplished and clearly defined deliverables and format requirements. It may include precise measurements, tolerances, materials, quality control requirements, and other Local Agency requirements that control the processes of the Consultant. Local Agency primarily uses this type of SOW for A&E and Related Services.

SOW – Scope of Work

