

# Statement of Work Writing Guide for A&E Personal Services

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## **General**

The Statement 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 Oregon Department of Transportation ("ODOT") 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 ODOT's best interest to clearly communicate ODOT's requirements and expectations for completion of services. In all cases the SOW must be in writing and clear enough to protect ODOT's interests; and must provide a meaningful measure of performance so both ODOT and the other party will know when the work is satisfactorily completed.

(A&E SOW Guide, Apr 2018)

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

## ***What is a "Scope" versus a "Statement" of Work?***

### **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 Invitation to Bid), 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 ODOT, and may identify some of the technical requirements. The general scope statement provides enough information so that prospective Consultants can (1) understand what services ODOT is 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 Statement of Work must be consistent with the scope of work described in the solicitation document.

### **Statement of Work**

The Statement of Work is the primary means through which ODOT communicates performance obligations and duties. The Statement of Work describes in detail the work to be performed and ODOT's performance expectations. The Statement of Work communicates ODOT objectives related to the cost and schedule for completion of services. The Statement of Work must be clear enough for the parties to understand their obligations and duties. A clear, concise Statement of Work helps create a Contract that is legally enforceable should performance issues arise during the Contract period. All services included in a Statement of Work must fall within the scope of work described in the solicitation.

## ***Independent Contractors***

ODOT must conduct business with Consultant staff in a manner that does not create an overall impression of an employer-employee relationship. OAR 731-146-0025 states that *"ODOT must develop a Statement of Work for services that will not result in an employee relationship with the potential Contractor."* In other words, the SOW must reflect and the actual manner in which business is conducted during the life of the Contract must demonstrate that Consultant is an independent contractor. When Consultant staff are subject to relatively continuous supervision and control by an ODOT employee(s), the relationship could be construed as an employer-employee relationship.

## ***SOW Templates for A&E and Related Services***

Prior to developing an SOW for a needed project, check the ODOT Procurement Office ("OPO") Internet site to confirm there is not a standardized A&E SOW template available that would apply to the services you need. SOW templates have been developed for several disciplines. OPO's long-term objective is to develop a library of

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templates that cover most A&E and Related disciplines. Some templates have been reviewed by Department of Justice and others have not. When using a template, please use Track Changes for any editing to facilitate quicker reviews by procurement and legal staff. See currently available templates on OPO's SOW Library page.

**Sample Format for SOWs:** When there are no templates that meet your needs, refer to the standard SOW outline, also available at OPO's SOW Library page, to help organize your SOW. Refer to the SOW templates as needed for sample contract language and examples of appropriate level of detail when developing an SOW.

### ***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, and to define the scope of work for the SOW. Early involvement of a Procurement Specialist is recommended

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 ODOT." This will help reduce concerns about whether ODOT is meeting the independent contractor requirements.

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 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 ODOT, Federal, or industry standards that dictate how services or deliverables must be completed?
- Are the services reoccurring? If so, what service level will have a real impact on customer satisfaction?
- 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?

(A&E SOW Guide, Apr 2018)

## ***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 ODOT 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 Agency plans to achieve by outsourcing this work.
  - **Scope of Services** – Briefly state what the SOW does and does not cover. The 'scope' paragraph defines the breadth and limitations of the work to be done by the Consultant. It should not include specific task details or a description of deliverable products.
- **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 or parent price agreement.
- **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 fairly 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. See "[Using Contingency Tasks](#)" in the SOW Writing Guide for more information.
- **Standardized Task Numbering and Naming**– Though not required, the best practice for A&E and Related Services SOWs is to use standard task numbering and naming available at OPO's SOW Library page. The intent is to assist with tracking task costs for use in future internal estimates and to work with a task library that is being developed.
- **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).

- **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.

## ***Project Phasing***

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phased development approach is used on most fully outsourced projects. It may be used on any project where there is too much uncertainty at the outset to negotiate fair and reasonable costs to complete the entire project. The typical exceptions, on a case-by-case basis, would be simple overlay jobs or small projects with no right-of-way ("R/W") impacts or alternatives to consider. The phased development approach allows for predetermined points during project development to negotiate costs for the next phase based on what is discovered in the preliminary tasks and/or analysis of alternatives.

Each project phase is added via amendment to the original contract or Work Order Contract ("WOC"). For each amendment, Consultant must submit a complete breakdown of estimated man-hours and costs per task for staff, subcontractors and allowable direct non-labor expenses for negotiations. Typical phases for fully outsourced A&E projects may include:

- **Design Acceptance Milestone:** Per Operational Notice PD-02, an Approved Design, footprint and environmental clearances are required for each project prior to completion of plans, specifications, and estimate. In outsourced projects the deliverables for this milestone are the Design Acceptance Package ("DAP").
- **Final Design:** After approval of the DAP, tasks, costs and schedule are negotiated for a contract/WOC amendment to complete the agreed upon final design.
- **Construction Engineering ("CE"):** The CE phase may be included in a project assignment. If so, it is normally added via amendment to the contract/WOC for the preliminary engineering ("PE") work. The method of payment for CE work is typically Time and Materials ("T&M") with a Not to Exceed ("NTE"), but may be Cost Plus Fixed Fee ("CPFF") with an NTE.
- **Mod or Bridge Projects:** The Consultant's design for most mod or bridge projects (especially those that include R/W purchase) is completed using a phased development approach. Project design is typically completed only through the DAP phase (or alternatives analysis if necessary) with Final Design (and bid assistance), and CE work added via separate amendments to the contract/WOC.
- **Preservation Projects:** For preservation projects, it may or may not make sense to use a phased development approach for the PE work. A relatively simple project that is primarily an overlay job with no R/W issues would normally not require a phased development approach to the contract. The project approach for preservation projects that have added complexities must be determined on a case-by-case basis.

## ***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, 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, ODOT issues 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 ODOT.

### ***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 ODOT.

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 ODOT 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 (ODOT 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.

(A&E SOW Guide, Apr 2018)

## Proper Use of Acronyms

SOW writing is technical writing and oftentimes 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 in quotes surrounded by parentheses. Once defined, the acronym can be used throughout the rest of the SOW.

Example: This Work Order Contract (“WOC”) is for Preliminary Engineering (“PE”) services necessary to develop the Design Acceptance Package (“DAP”) for the Project. The PE work to develop the DAP is a new phase of the Project, distinct from and in addition to the previous phase(s) completed in WOC 1.

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.

**Quantities.** When identifying a quantity, it is recommended to use only the numerical digit and not spell out the numeral followed by the digit in parenthesis. For example, "Consultant shall prepare alternatives analysis for **3** alternatives" is the preferred method instead of "Consultant shall prepare alternatives analysis for **three (3)** alternatives."

When quantities are changed, errors are more likely to occur when using the latter method. For example, "Consultant shall prepare alternatives analysis for **three (4)** alternatives." This inconsistency results in a direct conflict in the executed contract regarding the number of alternatives Consultant is required to prepare.

### **“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.***

Generally, for Personal Services Contracts, “Agency” means ODOT, but can mean the Department of Administrative Services (“DAS”) if the Contract is subject to DAS procurement authority. “Contractor” or “Consultant” means the legal or commercial entity with whom ODOT enters a Contract. “Contractor” has the same meaning as “Consultant” or “Provider”. Most of ODOT’s current boilerplate contracts and price

agreements for professional services have been converted to use “Consultant” consistently throughout.

Agreements identify ODOT as “State” and the other entity is referred to as “City”, “County”, or “Agency”.

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

When in doubt about which word to use to refer to a party in the SOW, please check with your assigned Procurement Specialist.

### **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.

Example:        Consultant        shall prepare        an environmental report.

Actor (subject)    action (verb)        receiver (noun)

### ***Avoid Passive Voice***

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.*”

(A&E SOW Guide, Apr 2018)



### **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.”*

### **Agency will...**

“Will” usually signifies an action at some undefined point in the future, in the Contract, or perhaps in another Contract. For instance, “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 the actor is.

### **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 Agency approval of draft report.”

A well-written SOW is the key tool in avoiding contractual disputes and performance problems. Use the links on page 1 to access more detailed guidance for preparing SOWs for a specific contract type. The ODOT Procurement Office has SOW templates available for some types of contracts.

Additional guidance for drafting legal documents is available at the following Website: <https://www.archives.gov/federal-register/write/legal-docs/clear-writing.html>

## ***Definitions***

**A&E** – Architectural and Engineering

**Best Efforts SOW.** This type of SOW is not recommended for A&E and Related Services. It has few, if any, enforceable requirements for Consultant. To request approval to use this type of SOW, submit a written justification with the WOC/Contract Request to the ODOT Procurement Office.

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

(A&E SOW Guide, Apr 2018)

**Detailed Statement 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 Agency requirements that control the processes of the Consultant. ODOT primarily uses this type of SOW for A&E and Related Services.

**Performance-Based Work Statement.** This type describes requirements in terms of results required and objectives rather than the methods for completing the work. This latitude will permit the contractor to develop new and innovative ways to attain the objectives and required results. This type is used primarily for non-A&E services. Because it is not desirable to have highly standardized A&E services completed differently and “in their own way” by each consulting firm, FAR 37.102 exempts A&E services from Performance Based Contracting.

**SOW** – Statement of Work

**WOC** – Work Order Contract