Statement of Work Writing Guide

for Personal Services

(Oregon Department of Transportation)

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1. 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.

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

2. 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.

3. 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.

4. Types of SOW

There are three general SOW types used in the procurement of Personal Services (non- A&E):

1. **Design/Detail:** This type of SOW prescribes precise measurements, tolerances, materials, quality, processes, and other requirements that control not just the outcome, but the means by which the consultant produces the outcome. This type of SOW is **generally not recommended** as the consultant’s responsibility may be limited if outcomes/deliverables do not meet ODOT’s needs.

2. **Level-of-Effort:** At the other end of the spectrum, a Level-of-Effort SOW is usually very broad and describes the general nature, scope or complexity of the services to be performed. Due to the general nature of the work, the deliverable (basis for payment) in this type of SOW is an hour of consultant work. The Level-of-Effort SOW is the **least desirable** and should be used only when no other SOW type is feasible.

3. **Performance-Based SOW:** This type of SOW is the **preferred method** of communicating ODOT’s needs. A Performance-Based SOW structures all aspects of a service around the output of the work and does not dictate how the work is to be accomplished. It provides for payment only when the results of consultant performance meets or exceeds the SOW requirements. A Performance-Based SOW emphasizes results that can be measured in terms of technical achievement, quality level, schedule progress, or cost performance.

   Before writing a Performance-Based SOW take the time to analyze the inherent nature of the needed services and how they will be delivered or made available. In most cases services can be described in one of two ways:

   - **Deliverables-Based**: Where specific payment is made after a service output is delivered, or a series of service outputs are delivered; or
   - **Recurring Services with Service Levels**: Where periodic payment is made after determining that service level indicators have been achieved.

5. General Structure and Content of the SOW

Performance/Deliverables-Based SOW. To help you draft a performance/deliverables based SOW, please see the SOW Writing Conventions document (available on the SOW Library page of OPO’s Internet site) for helpful information, including how to structure tasks with some sample language. This can be used for several types of procurements:

1. A project or contract specific procurement where the SOW is included in the contractual document, or
2. A procurement where a Price Agreement specifies the use of an ordering instrument such as a Work Order, Task Order, or Purchase Order. In this type of procurement the SOW requirements are tailored to each ordering instrument. The content of each SOW must be within the general scope of work and terms and conditions in the Price Agreement.

A Performance-Based SOW requires deliverables and identifies the outcome of the service, when the service outcome must be delivered, and a remedy that ODOT can enforce when the service outcome is not delivered per the schedule. The SOW ties payment directly to the delivery and acceptance of the service. For some services, interim deliverables and progress payments may be required before final acceptance takes place. Structure your SOW accordingly. The deliverables-based service is primarily **event driven** and answers the question: What service outcome must be delivered per the schedule and how will ODOT determine if the service outcome is acceptable?

Performance/Service-Level SOW for Recurring Services. When the services are recurring and the required service levels can be specified, a service level SOW may be appropriate. The service levels required in the SOW must be measurable and enforceable. Recurring services are primarily time driven, and may contain elements of service that are event driven. As a result, some portions of the SOW may need to include deliverables-based services. Recurring services answers the question: What services need to be available over a time period and how will ODOT determine they are good enough?

The matrix below is an example of how to display the services in your SOW. In addition to incorporating a matrix, you will probably have to include the following information in narrative form in the SOW:

- Details that further describe the required services.
- How responsibilities will be allocated between ODOT and the consultant.
- Workload forecasts (e.g. peak and average).
- Performance reporting requirements.
- Corrective actions if service levels are not met.
- Remedies available to ODOT if service levels are not met.
- Constraints and dependencies (e.g. how resources will be shared, other vendors involved, priorities).
- Any government-owned equipment or materials that will be provided.

Example of How to Format Recurring Tasks in a Service Level SOW

Activity: IT Help Desk operations
Activity Outcome: Support is provided to customers and problems are solved.

Required Service	Performance Standard	Service Level	ODOT Monitoring Method
Answer Calls	All calls placed are answered within 20 seconds of call initiation.	10% of calls may be forwarded to voicemail during peak periods.	Customer feedback reports. Random tests.
Resolve Problems	All referrals to technicians are resolved within 8 working hours of initial call.	90% of referrals are resolved within 16 working hours.	Review of monthly reports. Random monitoring with call-tracking software.
Provide Courteous Service	No more than 2 valid complaints about service are received during the	No deviation allowed.	Customer feedback and random review of surveys.

	month.		

Incentives/disincentives:

- Outstanding or unacceptable performance will be documented in performance reports.
- 10% reduction in monthly payment for failure to meet all service levels for 3 consecutive months.
- 10% increase in monthly payment for exceeding all service levels for 3 consecutive months.

6. General Guidelines for Writing a SOW

The SOW is a foundational document at every stage of the procurement process. Consider the following:

- Solicitation Stage:
  - Consultants use the SOW to develop and price their proposals.
  - Agencies use the contents of the SOW to create the evaluation factors and scoring criteria that will be applied to rank the proposals.
- Post-Award Stage:
  - Consultant and Agency will use the SOW as the basis for identifying and measuring contractual performance.
  - Consultant and Agency will use the SOW to determine legal rights and obligations during performance.

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. See information regarding the difference between a scope of work and statement of work.

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 type(s) of service contract or Agreement is the SOW for?
  - Personal Services Contract for information technology services?
  - Personal Services Contract for other non-A&E related services?
  - Cooperation for construction, research, training, etc.?

- 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?
- What is the project location and when does it need to be completed?
- 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?

Here are some DO's and a DON'T's to consider before writing your SOW:

- DO NOT insert solicitation requirements or contract clauses into your SOW. For example, SOWs should not include proposal evaluation factors and scoring. SOWs should not include a Key Person(s) requirement. Please separate the solicitation and contract requirements from the SOW requirements. The easiest way to do this is to create and submit separate documents: (1) SOW; (2) Solicitation Requirements; and (3) Contract Requirements.
- DO consider the type of compensation that will be used. This involves considering how the compensation method will affect the tasks and deliverables you include in the SOW. For example,
    - Fixed Price- This type of compensation requires the SOW be definitive enough for the Consultant to accurately determine the cost of performance. Fixed Price contracts place 100% of financial risk on the Consultant. The Consultant and Agency need a high degree of confidence that the requirements in the SOW will be completed within the fixed price.
    - Labor Hours/Time & Materials- In contrast to Fixed Price, this type of compensation is consistent with an SOW that is less definitive and does not enable the Consultant to accurately estimate the cost and extent of the effort. To reduce Agency risk, the resulting contract will include fixed billing rates for labor and a cap on the overall effort in the form of a contractual not-to-exceed amount.
- DO develop a table that will be included in the solicitation document for Proposers to submit their pricing or costs that are carried forward into the contract. In the solicitation this table will be used to determine the dollar amount of the Consultant's bid or proposal. In the contract this table will become the basis for payment. Include the table of pricing or costs in the solicitation requirements document you submit to the ODOT Procurement Office.
- DO consider the contracting method before writing your SOW. Using the "Competitive Sealed Bid" method, award is to lowest bidder whose bid substantially complies with the requirements and criteria set forth in the Invitation to Bid. Using "Competitive Sealed Proposal" method, award is to the highest ranked proposer based on evaluation and scoring of criteria defined in the Request for Proposal, such as qualifications, prior experience, and proposed approach to project. In the Competitive Sealed Proposal method for Personal Services (non-A&E), price can be included in the criteria that is evaluated, but award is not required to go to lowest bidder.

7. Basic Components of a Good SOW

Many of ODOT's service needs are complex and sometimes difficult to understand. With this in mind, there are many components that may be included in an SOW. Also, the components of an SOW need to be tailored to the applicable procurement situation. For example, an SOW for A&E services will probably have different components than an SOW for recurring services for Information Technology ("IT") help desk operations, or an SOW for a construction project.

The following components are generic. In addition, the writer should consult with their assigned Procurement Specialist to ensure the components of the SOW being written are consistent with the procurement situation.

- ***Contact Information***: Include table identifying name and contact information for ODOT's and Consultant's contract administrator and project manager (unless set forth elsewhere in the contract).
- ***Scope of Work***: - Typically includes Introduction, Background, Project Overview and Project Objectives. May be the same scope of work text from the solicitation document. The scope of work identifies the need for the particular work to be performed and typically consists of no more than three or four paragraphs. See information regarding the difference between a scope of work and statement of work.
- ***Definitions & Acronyms***: Identifies and defines terms not generally understood that are used in the SOW. Use defined terms and acronyms consistently throughout the SOW.
- ***Task Identification***: Activities that need to be completed to accomplish the objectives of the Contract. Must use "active voice" (see Style Guide section) and specifically obligate Consultant on all tasks assigned to Consultant. Sometimes task(s) can be included in a SOW even if it's not known whether the task(s) will be needed until after the work begins. Refer to Using Contingency Tasks section for more information.
- ***Standards:*** Identify any industry standards that need to be adhered to.
- ***Deliverables***: Identify clearly defined deliverables or service outcomes. Identify if deliverable is hard copy, electronic, or both, and any format, quantity, or compatibility requirements. See more detailed information about Deliverables.
- ***Schedule (and Milestones when applicable)***: Identifies due dates, milestone dates or timeframes, as appropriate for deliverables or recurring services.
- ***Compensation for Services***: When there is monetary compensation for services, identify the applicable method of compensation and the documentation requirements 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.

8. 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 measureable. For instance, a task for Consultant to complete an assessment of computer software functionality would have a deliverable of a written report of the findings. There are situations where services provided by a Consultant do not result in tangible deliverables, such as when a Consultant is required to facilitate meetings. The deliverable could be defined as the facilitated meeting, which is the outcome that ODOT agreed to pay for. However, in this situation the Consultant could also be required to submit a copy of the agenda and roster of participants at the facilitated meeting. Although the purpose of the task is not to produce an agenda or roster, these could be included as a tangible deliverable that validates the meeting occurred.

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 to ODOT. The task should specify that Consultant cannot proceed with the remaining tasks in the Contract until ODOT selects a preferred alternative for the Consultant to develop and implement (also see Phased Development section of this guide).

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.

9. 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. Another way to frame this is to say that the SOW could be handed to two different ODOT project managers and the quality of services and deliverables by the Consultant would not change.

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, ODOT 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 ODOT 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.

10. Identifying Remedies in the SOW

Every time the SOW creates an obligation to perform or deliver, the drafter should ask "What happens if the party (Consultant, ODOT, or third party) does not do this?" Craft a pragmatic response and include it in the SOW. For some Contracts, the contractual remedies are included in the Contract's Terms & Conditions section instead of in the Statement of Work.

If the risk that you are addressing is great, always consult with your assigned Procurement Specialist about potential remedies that go beyond the standard contract rights of termination and warranty.

11. Using a Phased Development Approach to Services

Avoid drafting one SOW to cover a large multi-year project unless there is a solid basis for the tasks and costs. Instead, split the services into more manageable phases. The SOW in the initial Contract includes only the first phase which is limited to the "known services and deliverables" and quantifiable contingency tasks. The Contract is amended as needed to add phases of tasks as the project progresses. This approach is very effective for managing cost.

When performance will proceed in phases, describe the scope of work for the whole project and identify phases that may be performed in the introduction/background section of the SOW for the initial Contract. This makes it clear to anyone that examines the Contract file that a conscious plan for amending the Contract was in place. This can help avoid any external ODOT restrictions or rule restrictions on the extent of amendments. ODOT sometimes spells out various options about whether to continue work after completion o`f the initially-contracted phase. When amending the Contract, identify the phase of work being added or revised in the introduction/background section of the SOW for the amendment.

12. Using Contingency Tasks

When there are services that may or may not be required to complete the project, it is normally a best practice to include such tasks or subtasks as “Contingency Tasks” in the SOW. Contingency Tasks must be tightly defined and written as to the subject, extent, fixed price or NTE amount for each contingency task, and the process for controlling how the contingency will be administered. When including Contingency Tasks in the SOW, ensure the SOW includes the approved optional provisions regarding costs and authorization of Contingency Tasks.

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 (see optional Contingency Task provisions in contract/WOC template).

13. 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.

14. SOW Writing Standards

Use Unambiguous Language

Ambiguous language means words that have more than one interpretation – uncertain or indefinite. Words or phrases such as “and/or”, "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.

Avoid Redundancy

Redundancies add unnecessary text/length to the SOW and create opportunities for conflicts. For each sentence in the SOW, ask yourself these questions:

- Have I already said this somewhere earlier? If so, do I really need to say it again?
- Does the reader really need to know this in order to understand the meaning? If you find yourself doubting whether something is necessary, the answer is probably no.
- Could I rephrase this more concisely, or can the redundancy be deleted?

Do not use “and/or”

Per DOJ policy, “and/or” is inherently ambiguous. Therefore it is not acceptable to use this slashed combo in Contract terms and conditions, including the provisions of the SOW. Additional information from other sources is available at the following links:

- DO Not Use “and/or” in Legal Writing
- General drafting principles for contracts

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.

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” means the legal or commercial entity with whom ODOT enters a Contract. “Contractor” has the same meaning as “Consultant” or “Provider”; however, ODOT's practice is to use the term “Consultant” in Personal Services Contracts, especially for Architectural & Engineering, Land Surveying, and Related Services.

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 (*Actor-subject*) shall prepare (*action-verb*) an environmental report (*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.”*

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

15. Additional Tools and Guidance for SOW Writing and Reviewing

Automated SOW Reviews

To assist with multi-page SOW reviews, some elements can be automated. Use the "Replace" tool in MS Word to find terms that may be inconsistent in the SOW or otherwise not in conformance with the SOW Writing Guide**. See "How to Automate SOW Reviews to Find and Correct Problem Areas**", which is a tool/checklist posted on the SOW Library under the "Statement of Work Writing Guides & Resources dropdown menu.

Drafting Legal Documents, Principles of Clear Writing

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