Drafting or Reviewing a Statement of Work

Introduction/Preamble

When drafting a Statement of Work (SOW), it is essential to begin by clearly identifying the parties involved. The master agreement (MA) should be referenced, as well as the MA's underlying agreement, if applicable. The SOW should also have its own contract number. If a reseller is being used to reach the vendor, the preamble should state that the reseller is "subcontracting" the work and name their contractor.

Key Points:

☐ All parties are identified.
☐ The master agreement and any underlying agreement(s) are referenced, if applicable.
☐ The SOW has a contract number.
☐ The reseller's contractor is identified as a "subcontractor."

Project Scope Description

The Project Scope is a description of the work to be performed. State the scope broadly, following up with specific statements. For example, you might say, "Vendor shall perform all tasks associated with operating the Medicaid Provider Services call center. This includes, but is not limited to: . . ." Ensure that the work described in the SOW is actually contemplated by the MA and underlying agreement; there must be a nexus between the MA/underlying agreement and the scope of the work being drafted. SOWs are for defined projects that require implementation or some kind of defined work; licensing or SaaS subscriptions should not be included within the description of the SOW.

Key Points:

☐ There is a broad statement about the work to be performed.
☐ Ensure a list of tasks includes the introductory phrase, "This includes, but is not limited to . . .".
☐ Consult the MA and underlying agreement to verify the scope of work is what was intended.
☐ Neither licensing nor subscription terms are included or incorporated.

Deliverables

Describe specific products, services, or results that the vendor is expected to deliver. Each deliverable should be described clearly. Deliverables are not activities; activities describe work effort ("configure system"), while deliverables are tangible outputs ("configuration guide completed"). All deliverables MUST be within the scope of the project. Consider creating a chart to clarify the payment structure (see accompanying SOW template). Unacceptable "deliverables" include a kick-off meeting and creation of a project management plan.

Key Points:

☐ Deliverables result in a tangible work product.
☐ Avoid lists; be precise in descriptions.
☐ Must not include kick-off meeting or project management plan.

Timeline and Milestones

Include a project schedule with start and end dates, major milestones, and any phases or stages of the project. The timeline should be realistic and account for any potential constraints.

Key Points:

☐ Start and end dates are defined.
☐ Include major milestones and deadlines.
☐ Project is broken down into phases, if applicable.

Acceptance Criteria

Without acceptance criteria, the agency has no footing to reject poor work. To determine the sufficiency of acceptance criteria, ask yourself if someone not on the project could (1) understand what to look for, and (2) determine if the deliverable passes or fails. The criterion for acceptance is never "complete" or "upon delivery." The agency must be afforded the opportunity to test the deliverable against the acceptance criteria and communicate its acceptance.

Key Points:

☐ Criteria are objectively measurable.

Roles and Responsibilities

This section should outline the responsibilities of both the agency and the vendor. Use clear, action-oriented language to specify who is responsible for each task, ensuring no ambiguity.

Key Points:

☐ Responsibilities for each party are clearly identified.
☐ Action verbs are used to specify tasks.
☐ Avoid lists; be explicit about which party is responsible for the task.

Term

The term may not begin before the date of last signature. For work beginning immediately, the term may begin "as of last date of signature." The end date should be defined; either an actual date or a calculation of days/months from one deliverable to the next. Because the SOW is for work to be performed, renewals should not be necessary. If the SOW does require renewals, automatic renewals are not permitted. The agency should track SOWs needing renewal and affirmatively renew in

advance. The SOW should not extend more than 60 days past the expiration date of the underlying agreement, unless the underlying agreement expressly permits.

Key Points:

☐ Ensure the term of the contract is defined.
☐ Term does not begin prior to contract execution.
☐ Do not allow automatic renewals.
☐ SOW does not extend past the expiration of the underlying agreement more than 60 days.

Assumptions

List any assumptions made in preparing the SOW. Assumptions are statements that must be true in order for the SOW to proceed as drafted (for example, the proposed cost has factored in the Assumptions). These might include conditions that are expected to exist for the successful completion of the project. Ensure all assumptions are realistic and agreed upon by both parties.

Key Points:

☐ Assumptions are clearly stated.
☐ Both parties understand and agree to stated assumptions.

Payment Terms

Outline the payment schedule and terms, linking payments to specific milestones or deliverables. Milestone payments are permitted as long as those milestones are made up of Deliverables. Payment upon SOW signing is not permitted. Payment for time and materials is not permitted. Avoid language that ties payment solely to the completion of deliverables; instead, use 'payment upon Acceptance of Deliverables.' This ensures the agency has the opportunity to approve ("Accept") the deliverable prior to invoicing. Do not permit reimbursement for travel. If reimbursement for travel is required, such travel charges may never exceed the amounts allowed under DAS-SAE travel policy.

Key Points:

☐ Payment schedule is clearly defined.
☐ Payments are tied to deliverables or milestones.
☐ Payment is not made upon signing the SOW.
☐ Ensure language permits payment upon Acceptance (not completion).
☐ No reimbursement for travel.

Change Order Procedure

A change order is simply an amendment and should be used sparingly. To the degree possible, all aspects of an SOW should be contemplated and memorialized in the SOW in order to avoid future change orders/amendments. Detail the process for handling changes to the scope, schedule, or other

aspects of the project. Specify who has the authority to approve changes. This process may already be addressed in the MA or underlying agreement; compare and modify as appropriate.

Key Points:

☐ The change order process is clearly defined.

☐ The person having authority to approve changes is identified.

☐ Compare to the procedure in the MA or underlying agreement.

Terms and Conditions

When additional terms and conditions appear in a purchasing instrument, you must work with legal regarding these provisions. Additionally, there may be legal or contractual terms that are necessary to add to the purchasing instrument when federally-protected data is contemplated and not incorporated into the MA (ex. CJIS, HIPAA, or FTI), if grant or federal funds are used for payment, or if the vendor is providing direct services to the public or oversight/enforcement of services to the public. Legal provisions could include limitation of liability or definition of confidentiality.

Key Points:

☐ Legal provisions must be handled by your legal team.

Signatures

Ensure that signature blocks are provided for authorized representatives for all parties to sign and approve the SOW. In some cases, a signature block for the DOM director will be required in addition to the contracting agency. The vendor should sign the SOW first. When purchasing via a reseller, the contract is between the contracting agency and the reseller (not the vendor's contractor providing the good/service).

Key Points:

☐ Signature blocks for all parties are included.

☐ If a reseller is used to reach the vendor, the contract is signed between Iowa and the reseller.

Additional Considerations

Ensure every section and subsection is enumerated for easy reference. Strike any language that indicates things will be figured out after the SOW is signed—everything should be contemplated and memorialized in advance. Also strike provisions that require payment of taxes, advance payments, or hyperlinks to additional terms. Proposal-type language does not belong in a SOW; revise non-binding language to create obligations. Examples of non-binding language include "may," "could," and "should."

Key Points:

☐ Sections and subsections are enumerated.

☐ Strike 'to be determined' language.
☐ Revise non-binding language to create obligations.
☐ Strike a provision that requires the State to pay a tax, advance payment, or cancellation charge.
☐ Strike a provision that includes terms unknown at signing, unilaterally changeable by the vendor, or hyperlinks.
☐ Strike a provision stating the contract terms, pricing, or cost information are confidential.
☐ Strike a provision stating the law of another state or foreign country governs the contract, or that disputes are heard in a court outside Iowa.
☐ Strike a provision requiring binding arbitration or a waiver of the right to a jury trial.
☐ Strike a provision that requires the State to indemnify, defend, or hold the vendor harmless. A provision in which the vendor indemnifies the State is acceptable.
☐ Strike a provision stating the State must pay the vendor's attorney fees, court costs, or other litigation costs, or carry commercial insurance.