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."

Scope of Work Description

The Scope of Work Description is a high-level description of the work to be performed such that anyone should be able to read this section and understand what the SOW is for. You might prompt Copilot to provide this: "Describe high-level in 4-5 sentences the work that is being done in this SOW." 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 high-level, easy-to-read description of the work to be performed.

☐ 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).

Key Points:

☐ Deliverables result in a tangible work product.

☐ Avoid lists; be precise in descriptions.

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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. You may prompt Copilot to help brainstorm acceptance criteria: "Draft acceptance criteria for deliverables 3.1 and 3.2."

Key Points:

☐ Criteria for every deliverable 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. These might include conditions that are expected to exist for the successful completion of the project. For example, if certain licenses for third-party integration must be purchased prior to implementation. 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.

Terms and Conditions

Include any legal or contractual terms that are <u>not</u> already addressed in the MA or that differ from the MA (ex. CJIS, HIPAA, or FTI). If the vendor is offering terms, ensure that these terms do not conflict with the MA or Iowa law. Provisions for limitation of liability must be subject to Iowa's carveouts in Iowa Admin Code 11-120.5. Do not allow language that purports the SOW to be proprietary or confidential; it likely is not. Agencies planning to use grant funds must also comply with any applicable grant requirements or special conditions imposed by the underlying grant award that will fund the procurement. If federal funds are being used to pay for any part of the SOW, additional language must be included (see Attachment A Federal Certifications). If the SOW involves direct services to the public or oversight/enforcement of services to the public, additional 8F language and signature blocks must be included (see Iowa Code Ch 8F).

Key Points:

☐ Any additional terms and conditions have not already been addressed in the MA.

☐ Limitation of liability and governing law are in accordance with state law.

☐ No proprietary or confidential language.

☐ Additional terms are included if grant or federal funds are being used for payment, or Iowa Code 8F is implicated.

Payment Terms

Outline the payment schedule and terms, linking payments to specific milestones or 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 <u>required</u>, 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.

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 for Reviewing Vendor-Supplied SOWs

When reviewing SOWs on vendor paper, 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. Strike provisions that require mediation, arbitration, or waiver of jury trial. Also strike provisions that require payment of taxes, advance payments, or hyperlinks to additional terms. If governing law and/or venue are not in Iowa, strike.

Key Points:

- ☐ Sections and subsections are enumerated.

☐ Strike 'to be determined' language.

☐ Strike provisions requiring mediation, arbitration, or waiver of jury trial.

☐ Strike provisions requiring payment of taxes, advance payment, governing law or venue outside of Iowa, or include hyperlinks.