

# Public Procurement Practice

## PRACTICAL GUIDANCE FOR DISTINGUISHING BETWEEN SCOPE OF WORK AND STATEMENT OF WORK

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### INTRODUCTION

Historically, the terms **scope of work** and **statement of work** have been used interchangeably, inconsistently, or in contradictory ways. Some entities have specifically defined these terms for their own usage. As a result, definitions that form the basis for discussions and clear, more universal guidance must be established. This practice provides those definitions, distinguishes between the two terms, and sets a standard for how these terms are used in the professional language of public procurement.

### STANDARD

The **scope of work** is prepared at the beginning of any procurement and becomes the basis for any resulting solicitation. A well-written scope of work provides the supplier with a clear understanding of entity needs to ensure a successful procurement. In addition, a well-written scope of work contributes to an entity's reputation and credibility for performing due diligence and acting with impartiality.

The **statement of work** becomes the basis of a contract. A well-written statement of work in the contract captures the agreement between the entity and supplier, and may mitigate or avoid disputes.

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#### *Definition: Scope of Work*

A scope of work is developed at the beginning of the procurement cycle and is a written description of the entity's needs and desired outcomes for the procurement and becomes the basis for any resulting solicitation. The scope of work helps to ensure that the product or service meets the stated outcome and establishes the parameters of the resulting contract.

A scope of work must provide sufficient information for the supplier to:

- Determine whether the solicitation aligns with their business.
  - Decide whether responding to the solicitation is profitable and worth the effort.
  - Determine whether they can submit a responsive and responsible offer.
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#### **Element 1: The scope of work identifies the entity needs and desired outcomes and is directed to potential suppliers.**

The procurement professional collaborates with stakeholders to write, revise, and refine the scope of work. As procurement planning progresses, market research is conducted to better define the needs and desired outcomes and to identify the availability of suppliers in the marketplace.



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The entity will determine the content, format, and detail of the scope of work depending on the:

- Knowledge of the relevant industry and essential qualities and features of the good or service.
- Availability of what is in the marketplace.
- Ability and willingness to include flexibility in the specification to allow the supplier to use creativity and innovation in the proposal.
- Entity's tolerance for risk.
- Budget for the project.

#### **Element 2: Development of the scope of work will help determine the most appropriate procurement method.**

The procurement professional must consider the scope of work in relation to available sources internally and in the current market environment. The procurement professional will select the best source to meet the need and, if a procurement is necessary, decide which method (e.g., non-competitive or open, competitive procurement) to use. The scope of work for a competitive procurement will determine whether the solicitation evaluation criteria will be based solely on price or on price and other criteria.

Regardless of the procurement method, the scope of work must:

- Identify the needs and desired outcomes in one section of the solicitation.
- Allow potential suppliers to understand and respond to the entity's needs.
- Use clear and concise language.
- Avoid overly restrictive specifications.
- Group together similar requirements (technology, reporting, billing).
- Use consistent formatting.

#### *Revisions to the scope of work*

The scope of work may change as a result of the chosen procurement method. If the procurement method does not involve negotiation, the scope of work remains unchanged as stated in the solicitation, unless addenda are issued to modify the scope of work and/or the specifications during the solicitation process. With a procurement method that involves negotiation, the scope of work and other terms and conditions of the contract may be discussed. A best value procurement method may revise the scope of work in response to proposer feedback.

The solicitation should include general questions that elicit responses from proposers that may cause revisions to the scope of work. The proposer may be asked to:

- Critique the scope of work described in the solicitation (e.g., what works, what deletions, changes, or options for achieving desired outcomes does the proposer recommend).
- Describe the key issues required to achieve success specific to the project and the best approach to address key issues.
- Provide detailed alternatives that impact quality, time, price, and deliverables.

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#### **Definition: Statement of Work**

The statement of work is a written description in the contract detailing performance expectations and deliverables between the contracting parties. After a supplier has been selected, the statement of work becomes the basis for the contract and must provide sufficient information to:

- Meet the entity's needs and achieve successful outcomes.
- Describe and define the expectations of the parties.
- Set price and payment schedules.
- Mitigate or avoid disputes.

#### **Element 3: The statement of work is shaped by the agreement of the contract parties and is dependent upon the selected procurement method.**

The statement of work describes the who, what, when, where, why, how, and price and payment schedule components of the contract.

- Who will perform the tasks
- The agreed-upon tasks, including measurable level of effort; what tools and materials are needed; and deliverables or acceptance criteria
- The schedule for completing those tasks or deliverables
- The location for the performance or delivery of the good or service
- The purpose, goals, and objectives for the project and functions as the preamble to the contract
- The process for making decisions and accomplishing the stated purpose, goals, and objectives
- Price and payment schedule: The price for the work and the payment schedule type, which could be defined at the task level, milestone level, or at the project level

#### *Negotiation considerations*

Typically, there is no negotiation when a bidder submits a bid in response to an Invitation for Bids (IFB). The entity will either reject the bid or, if accepted, will combine the bid and the scope of work to form the statement of work and finalize the contract.

Negotiation may be conducted in response to a Request for Proposals (RFP) or similar method such as a Request for Qualifications (RFQu) or Qualifications-Based Selection (QBS). The selected proposal becomes a reference for the eventual statement of work. The negotiations will further define the components mentioned previously, transforming the scope of work into the statement of work.

The statement of work should explicitly state the expectations of the parties and restate the requirements and deliverables from the scope of work and specifications, including any addenda.

#### *Contract format*

Clause titles within the contract may vary according to what the parties find most useful. The statement of work may include labeled sections that list and describe:

- Contract management responsibilities for the parties.
- Contract tasks and deliverable products.
- Inspection and acceptance criteria for deliverables.
- Delivery schedules.
- Information related to determining prices and costs.



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- Communication of expectations and level of reporting and monitoring.
- Decisions to be made by the entity and decisions that may be delegated to the supplier.
- Final tasks (e.g., punch list, walk-through), timeline, schedule, price, and costs.
- Close-out requirements (e.g., final presentations, documentation).

The statement of work may also incorporate exhibits and attachments (e.g., pipe schedules, safety and security standards, technology standards, implementation or testing plan, Federal E-Verify requirements for public works) related to:

- Industry specifications and standards.
- Government specifications and standards.

#### **Element 4: The content, format, and detail of the statement of work will vary depending on the detail of the scope of work.**

The degree of detail and flexibility in a statement of work depends on how general or specific the scope of work was written. A statement of work for a contract with performance specifications may be less prescriptive about process and more focused on outcomes and deliverables. A statement of work for a contract with design specifications may be more prescriptive and include detailed tasks, deliverables, schedule, standards, expectations, limitations, and industry requirements (security standards, inspections, testing).

Content, format, and detail of the statement of work will vary according to different factors and may include:

- The degree to which the scope of work is descriptive and open to creative solutions.
- The proposal and its range of known alternative approaches as well as the supplier's recommended approach.
- The desired roles and responsibilities of the parties. If the entity is more involved in the work process, less prescriptive detail in the statement of work may be appropriate.
- The expertise of the parties. The supplier may be able to function as a self-contained expert, while at other times, the entity may hold much of the necessary expertise.
- The degree of risk involved in solving the need and the amount of risk each party will accept.

Reviewing the statement of work within the context of the entire contract ensures that both parties agree to all expectations, requirements, and deliverables, and all contract terms and conditions are appropriate to and consistent with the statement of work. A contract with a less detailed statement of work with more risk may include other contract conditions to offset the risk. If the statement of work involves use or creation of intellectual property, the contract must include provisions relating to use and ownership of intellectual property. If the definition of later project steps depends on what is discovered during earlier steps, the contract must describe the decisions and authorizations needed for the project to proceed.

Contract drafters and reviewers must carefully choose the legal order of precedence between the statement of work and all other sections of the contract, including any documents incorporated by reference.

#### **Conclusion**

The terms Scope of Work and Statement of Work indicate the solicitation and contract phase of the public procurement process, respectively. This practice effectively defines the two terms and outlines their significance in each phase.