

Statement of Work (SOW) Writing Guide

October, 2007

Companion document to the
Materiel Management Institute (MMI) Course:

How to Write Better RFP Statements of Work



Purpose of This Document

Government departments/agencies face many unique challenges in the area of procurement. They have a large number of diverse programs, responsibilities and employees across Canada. To a great extent, procurement requirements are also largely “event-driven”, and in some cases (but not all) these events can and do occur on very short notice. Foreseen or unforeseen, when these events do occur they typically generate substantial amounts of procurement activity in an environment of extreme urgency and priority.

Government program managers have an important job to do and critical programs to deliver. Canadians expect a great deal from them, and they operate under high degrees of pressure, urgency and scrutiny.

Many program managers do not feel that they have adequate time or training to consider the many facets of government procurement policy. For some, the procurement process is often viewed as an impediment or an obstacle preventing them from getting on with their job.

When there is a program or event to be delivered, time is limited and procurement requirements have not been planned in advance (for any reason), there is a strong impulse among some managers to take whatever measures they can to by-pass or look for shortcuts around the procurement process, and simply get it done as quickly and expeditiously as possible. And this is precisely where the majority of procurement risks emanate from. When shortcuts get taken; when full compliance with the rules is sacrificed in the name of expediency; when an open, fair, transparent and competitive selection process is by-passed in favour of a sole source contract, an ACAN, an amendment or some other similar mechanism, these decisions can almost always be identified as the leading cause of potential procurement risks to the department.

We have created this document in an effort to assist government employees with the demands of the competitive procurement process, and in particular the demands associated with writing Statements of Work. Our hope is that it is of some benefit to managers in their efforts to meet operational procurement needs, while at the same time balancing the need to ensure compliance with the spirit and intent of government contracting policies.

Any errors or omissions are the sole responsibility of the author. Questions or other enquiries may be directed to:

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Note to Readers

This SOW Writing Guide is a companion document to the Materiel Management Institute (MMI) Course, entitled: ***How to Write Better Statements of Work and Bid Evaluation Criteria***.

This document was produced by RFP SOLUTIONS (on behalf of MMI) for training purposes, based on a generic SOW format.

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Prior to using the material within this document as an aide in developing their own SOW, readers are advised to consult with their Materiel Management and Contracting colleagues to ensure consistency with the latest version of the Department's RFP template, and to obtain further advice regarding RFP related policies and procedures.

SOW Writing Guide - Reminder Checklist



Remember to select the right “type” of SOW for your requirement:

1. **Performance-based** (the default for Professional Services Contracts)
2. **Detail/Design** (for highly prescriptive requirements)
3. **Level-of-Effort** (for Temp Help, Data Entry or other similar requirements)



Try to write your SOW in a sufficiently detailed manner, so as to provide enough of a basis at a later stage when you will be required to extract relevant criteria that will be used to differentiate competing proposals. Remember that the selection criteria that you develop for your RFP must have a logical foundation within the text of the SOW - you cannot differentiate bidders on factors that have no relevance to the work itself (as described within the SOW), as this would be both meaningless and unfair.



If writing a Performance-based SOW, try not to “tie the Bidders’ hands” by being overly prescriptive in your description of the work and the manner in which it is to be undertaken. While care should always be taken to fully describe your requirement (as per above), try to balance this by leaving bidders with the flexibility in their proposals to offer innovative strategies, and to accept maximum responsibility and accountability for the results of their work. The primary risk in being overly prescriptive in your SOW is contractor “finger-pointing” and unwillingness to accept responsibility for results (“I did it the way you asked for it; if you don’t like the outcome, don’t blame me,...”).



When writing your SOW, try to think ahead to the contract management stage (once the winning bidder has been selected and the work is underway). In doing this, try to write your SOW in such a way as to ensure that the mutual expectations of the resulting contract will be adequately described and easily understood. Once the contract is underway, a well written SOW will go a long way to minimizing potential misunderstandings and/or disputes with your Contractor.



Remember to always use generic (non-proprietary) terminology and references in describing your requirements. This enables greater competition, and it also minimizes the risk of a bid challenge or allegation that the requirements were slanted to a particular bidder.



Remember to use the present/active tense when writing your SOW, as the document needs to survive the RFP process and move forward intact into the contract itself. If the document is written in the present/active tense, it can be more easily interpreted at various points in time throughout the RFP/Contract cycle.



The words “will” and “shall” have specific, legally interpreted meanings within a SOW. The word “Shall” is always used to convey a binding provision on the Contractor (i.e. “The Contractor *shall* supply ,...”). The word “Will” is always used to convey a declaration of future action by the Buyer/Government (i.e. “The Department *will* provide the Contractor with,...”).



Using the principles and examples provided within the SOW Writing Guide, group information as logically as possible within your SOW. There is an abundance of information associated with an SOW, and it is used by different audiences for different purposes, at different points in time. The SOW template has a place for everything, and a good SOW places everything in its proper place.



Try to use plain and simple language in writing your SOW, and to avoid jargon, vague terms and rambling sentences. While there is a natural tendency to want to cover-off all possible contingencies in a SOW and to establish the basis for an iron-tight, no-risk, enforceable contract, this often leads to excessive “legalese” with the document, creating confusion, misunderstandings and contradictions. Ask yourself: “What would a reasonable person looking at this conclude?”.



Remember to spell out acronyms and provide definitions for any technical or unique terms used within your SOW.



There is tremendous potential within a SOW for overlap, duplication, and/or contradiction with the Terms and Conditions (T’s & C’s) of the resulting Contract. Remember – the contents of the SOW are variable to define the requirement(s) at hand vs. the T’s & C’s which contain the standard terms and conditions of the resulting contract. If it’s covered-off in the T’s & C’s, you generally don’t need to worry about it in the SOW.



Above all, do your best in the SOW to convey to the Bidders what it will take on their part to complete the work to your satisfaction, and accordingly what it will take for them to ultimately have their work accepted and certified for payment.

Statement of Work (SOW) Writing Guide

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SW1.0 TITLE

The Title clearly and succinctly summarizes the name of the requirement being contracted for, and should, ‘at a glance’, answer the question: who is trying to buy what *and* via what form of contracting mechanism (i.e. standing offer vs. contract)?

- 1.1 Briefly and clearly, identify the type of service being acquired, the client organization (Department, Agency, Office, etc.,..) acquiring the services, and the contracting mechanism type(s) resulting from the Request for Proposal (RFP).

SW2.0 BACKGROUND

The Background section provides contextual information that plays a key role during the proposal solicitation stage by providing Bidders with an understanding of the organization’s requirement, its objectives and key drivers for the work to be undertaken that can assist in determining whether to bid and in preparing a Proposal. The Background section should also support the organization’s documentation of its business case, including the rationale for the work and the need to enter into Contract.

- 2.1 Describe the mandate of the organization (Department, Agency, Office, etc.,..) acquiring the services. All acquisitions must be within the mandate of the purchasing organization.
- 2.2 As required, identify the authorized users of the resulting mechanism. Describe the area within the organization (Branch, Division, etc.,..) requiring the services. Similarly, identify whether the resulting mechanism will be accessible by all areas within the organization, or by only selected (and identified) authorized users.
- 2.3 Describe the specific commodity (type of service) being acquired.
- 2.4 At a high level, briefly describe the organizational program, project, or internal operational requirement for which the services are being acquired. The ‘need’ for the work to be completed must be clearly articulated – if possible, contextualize the project/requirement within the organization/area’s overall business plan.

- 2.5 If needed, provide additional background/contextual information on the requirement and/or the Department/Agency.
- 2.6 If available, and if it would be helpful to Bidders in developing their proposals, provide publicly accessible informational URL's .
- 2.7 Identify the reason the organization needs to source the requirement externally (i.e. via Contractors). The first determination required by *Contracting Policy* is whether the requirement can be satisfied in-house. This subsection should articulate why the Department feels that a contract is needed to meet this requirement.
- 2.8 Identify whether the requirement is recurring, the first in a series of similar upcoming requirements, a subsequent phase in a multi-phase program/initiative, or a 'one off' (i.e. one-time only) project. If the requirement is recurring, identify whether previous mechanisms established were competitive or non-competitive and, if available, provide a link to the organization's proactive disclosure website. If the work to be undertaken consists of planning for or requirements definition in support of anticipated future work for which contracts will be established by the Government at a later date, this should be clearly articulated, including any restrictions that may be placed on the resulting Contractor(s) from participating on the future work. This subsection can help to mitigate the risk of perceived bias and/or prior knowledge on the part of 'incumbent' Contractors, through the organization's proactive disclosure of its previous activities and future intentions.

SW3.0 OBJECTIVE

The Objective section identifies the organization's overall outcome for the resulting contracted work, to provide a clear understanding and enforceable outcome for the work to be undertaken.

The Objective also identifies the organization's anticipated outcome of the competitive bidding process, leading to the awarding of the resulting contract(s). Its primary role at the RFP stage is to provide Bidders with a clear understanding of the structure and number of resulting mechanism(s) to be awarded.

- 3.1 Describe in outcomes-based terminology precisely what the organization hopes to achieve as a result of this RFP.

Indicate if it is the organization's intent to award the resulting mechanism(s) to one or multiple Contractors.

Identify whether the required type of Contractor consists of a firm or an individual providing services, or both.

SW4.0 ESTIMATED VALUE

The Estimated Value section provides guidance to potential Bidders during the RFP stage vis-à-vis the expected value of the resulting mechanism(s). It can facilitate an understanding of the scale of the work to be undertaken, or can serve as guidance to identify the maximum budget within which the requirement must be fulfilled. The Estimated Value does not represent a commitment on the part of the Crown to enter into contract for a specified amount, but instead provides a framework within which potential Bidders may quote their proposed price/rates for the work.

Disclosure of the Estimated Value of the work is generally at the discretion of the buying organization. The organization may opt to remain silent on this point within the SOW. The risk in this approach is that Bidders will be given very little guidance, and there is a greater likelihood that resulting proposal values will be based on incomplete information or invalid assumptions, potentially penalizing one or more Bidders.

The actual value of the resulting mechanism(s) will be identified upon Award, and is located on the first page of the resulting contracting mechanism and in the Articles of Agreement.

How the Estimated Value is articulated within the SOW is also largely dependent upon the type of resulting contract mechanism.

4.1.a The Estimated Value of a Contract or a Call-up to a SOA/Supply Arrangement (SA) (i.e. a mechanism with one (1) winner) can be expressed in several ways. At the RFP stage, value may be:

- fixed (the organization encourages Bidders to compete by seeing who can propose 'the most' for a pre-specified, fixed amount);
- estimated (the organization is unsure of the value of the work to be undertaken and is providing some guidance only, usually as a high-low range); or

- **an amount not to exceed** (an upper limit to the resulting Contract/Call-up that will not be exceeded in the resulting Award, but Proposals lower than this value would of course be acceptable).
- 4.1.b Estimated Value for Standing Offer Agreements** should identify the maximum expected value of all Standing Offer Agreements over their intended duration (i.e. the sum of all anticipated requirements under all resulting SOA's).
- 4.1.c** Due to the anticipatory nature of the mechanism, the value of **Supply Arrangements** may be specified upon Award, or may consist of a ceiling value for the Arrangement, that once reached, a Contractor may not be issued further Call-ups. Clearly identify whether the value will be specified upon Award, or if there will be a limitation of expenditure in effect.

In all cases, clearly identify whether the estimated value of the requirement is inclusive of GST/HST, Travel and Living Expenses and/or Administrative Expenses or other direct costs.

Note: TB Contract Entry Authorities and Trade Agreement thresholds are inclusive of GST/HST and all expense amounts. PWGSC delegated authorities are typically exclusive of GST/HST and expenses.

SW5.0 DEFINITIONS AND APPLICABLE DOCUMENTS

Definitions and Applicable Documents section provides contextual information at both the RFP and Contract stages to ensure clarity in the interpretation of the SOW and identification of overarching legislation, policies, procedures and guidelines that will govern the resulting work. The purpose of this section is to mitigate ambiguity and misunderstanding that could lead to poor proposals at the RFP stage, or default, breach or dispute at the Contract stage.

- 5.1** Define terms that may be unfamiliar and spell out acronyms. This includes terminology unique to the commodity, field of work, the organization, GoC or contracting.

- 5.2 Identify all applicable documentation or reference material that the Contractor(s) will require to complete the work, or that will provide useful background to Bidders in preparing their proposals. Referenced policies become enforceable in the resulting Contract. Applicable documents can be attached as an Annex to the SOW, via a publicly accessible URL where the documents may be obtained, by coordinating contact with the Contracting Authority to obtain copies via e-mail or reading room (especially for secure documentation), or made available upon Award.**

Provide only what is pertinent to the work and relevant for Bidders to understand the requirement and for resulting the Contractor(s) to complete the work correctly.

SW6.0 BUSINESS AND/OR TECHNICAL ENVIRONMENT

Business and/or Technical Environment section provides contextual information to Bidders at the RFP stage to identify operational requirements of the work and programs, systems and infrastructure with which the Contractor(s) will be required to work in the Contract stage.

- 6.1 The Business Environment identifies the hours of operation for the organization and identifies the contractual requirements for the Contractor(s) to provide service in accordance with or beyond regular operating hours. The requirements for Contractor service hours are enforceable at the Contract stage.**
- 6.1.1 Identify the hours of operation for the organization (e.g. normal working hours M-F; extended or peak hours based on region of service delivery; or 24x7 operation).**
- 6.1.2 Describe the organization's expectation for the Contractor's(s) working hours. Identify whether the Contractor is expected to be available to provide service in accordance with the organization's hours of operation or whether additional hours of service (e.g. occasional after hours work; extended hours; 24x7) are required. As applicable, clearly identify if the Contractor's extended hours differ from those of the organization.**

6.1.3 Requirements for Overtime Work: Identify whether the Contractor will be required to complete overtime work (i.e. will the organization will consume billable hours from individual Contractor resources in excess of the provincial norm, typically, more than 40 hours/week?). Clearly identify whether overtime is required on a continual basis, occasionally or not at all. The organization's definition for Overtime should be included in SW5.1, Definitions.

To avoid dispute at the Contract stage, clearly identify whether the organization is prepared to pay the Contractor a higher rate for Overtime hours worked.

If Overtime will be reimbursed at a different rate, the organization may specify a rate (e.g. time and a half, etc.) or may request Bidders to identify proposed Overtime rates within the Basis of Payment/Financial Evaluation portion of the RFP, for the purpose of evaluating Bidders on their Overtime rates.

6.1.4 Requirements for On-Call Service: Identify whether the Contractor is required to be available outside of the Contractor's regular working hours (as defined in 6.1.2 above). Identify whether On-Call requirements are for routine services and/or for emergency response. To avoid dispute at the Contract stage, clearly identify whether the organization will pay a different rate for On-Call Service requirements. Additional charges for this service response may be specified by the organization or Bidders may be requested to identify proposed rates for the purpose of Financial Evaluation. On-Call rates may be reimbursed in a variety of means (e.g. retainer at a percentage of the Contractor's daily rate; flat fee per call; a rate for time utilized during the call; or a combination of these methods. Clearly identify which method of payment will be utilized in the resulting Contract.

6.1.5 Requirements for RUSH Service: Different service types, such as communications, speech writing, translation, etc., may have requirements for the Contractor to respond and deliver service/complete a deliverable in a time frame that is an exception to the normal response time or service standard (to be identified in SW11) and/or when the organization has requested greater than typical volumes of work from the Contractor within the same period of time. If included, this provision places an obligation on the Contractor to respond and deliver service in accordance with the RUSH parameter, when requested by the organization and accepted by the Contractor, that becomes enforceable in the resulting Contract. Clearly identify whether RUSH service may be required and the conditions that must be in place for requirements to be deemed RUSH (i.e. shorter than normal response time, as identified by the Project Authority, etc.).

To avoid dispute at the Contract stage, clearly identify how the organization will pay for RUSH Service. Additional charges for this service response may be specified by the organization (as an identified multiplier of the base rate of service or another method), or, Bidders may be requested to identify proposed rates for the purpose of Financial Evaluation.

If RUSH Service is included, be sure to identify within SW11 the normal and RUSH response times for work.

6.2 The Technical Environment provides a description of the technological infrastructure, systems and/or programs operant within the organization. This section is optional, dependent upon the type of services being acquired (e.g. IT Services) and/or a requirement for the Contractor to work within the organization's existing technical standards or infrastructure. Inclusion of this section places an obligation on the Contractor to comply with the organization's standards that becomes enforceable in the resulting Contract.

6.2.1 As required, provide a description of the aspects of the organization's IT infrastructure/technical environment that are *relevant* to the work being undertaken.

6.2.2 Identify the specific obligation being placed on the Contractor. For example, the Contractor may be required to adapt the output of its work/ensure compatibility with the technical/technology within the organization; and/or to ensure that its resources are properly trained and equipped to work with the organization's technology or equipment.

SW7.0 DESCRIPTION AND SCOPE OF WORK

The Scope provides guidance at the RFP stage to assist Bidders in understanding the work to be undertaken and provide clarity in developing their Proposals.

At the Contract stage, the Scope provides enforceable guidance to the Contractor as to where to focus its efforts in the resulting Contract to ensure the Contractor remains 'in scope' and focussed on issues, tasks and other activities that are relevant to the completion of the work.

The contents and structure of the Scope are influenced by the type of resulting contractual mechanism. The Scope of Work in a Contract or Call-up is typically brief, due to the

organization's ability to clearly define the required Deliverables (SW8); and provides an overall context to the work to be undertaken. Standing Offer Agreement or Supply Arrangement Scopes of Work are generally more detailed, due to the anticipatory nature of the mechanism and the inability to articulate specific deliverables under the resulting Call-ups. The Scope in SOA's and SA's will define typical activities and tasks to be undertaken. Finally, the structure of the Scope of Work in a TA Contract will be a hybrid between that in a Contract and that in an SOA/SA, due to a greater ability to define deliverables (than in a purely anticipatory mechanism like an SOA/SA), but an inability to foresee precisely when and in what context these deliverables will be required (as in a Contract/Call-up).

- 7.1** The Scope section with a SOW describes the logical boundaries within which the work will take place (ie. what is the work, and what is it not?).

In contrast to the Deliverables under the Contract (described in SW8) which identify the specific, tangible items the Contractor must complete in order to receive payment, this section "sets the stage" for a later and more precise description of the deliverables, by first describing the work at a macro or conceptual framework level, and in more general terms.

Where Deliverables may be characterized as Outputs of the resulting Contract, the Scope identifies the Inputs (requirements of the broader field of work, specific activities, etc.) required to successfully complete the work.

To avoid contradiction or misunderstanding of the requirement, clearly identify the distinction between the Scope and the Deliverables sections of the SOW and direct Bidders/the Contractor to SW8 for a listing of specific deliverables.

- 7.2** Frame the required work within the context of the academic or professional discipline in which it is situated. Provide a brief description of the discipline to ensure understanding of the requirements to successfully undertake the work within this broader field.

- 7.3** Clearly describe the activities the Contractor is required to undertake that will lead to the production of the Deliverables (SW8), but that are not part of the content of the Deliverables themselves. To ensure the Contract remains "Performance-Based" do not over-specify the specific methodologies or approaches to be used in completing these required steps. Any organizational/requirement specific methodologies should be described in SW10.

For each activity described, provide the scale and metrics (e.g. identify the frequency, quantity or volume of inputs the Contractor is required to make) for the successful completion of the work. For anticipatory mechanisms (SOA's/SA's) all Scope activities will be "as required and specified in the Call-up document".

- 7.4 For Contract/Call-up Scopes of Work, identify the high level project phases/milestones. To avoid ambiguity or contradiction, direct Bidders/Contractors to SW8 for identification of where the Deliverables fit within these phases/milestones. For SOA/SA Scopes of Work, where deliverables are unknown, the Scope may be driven by the type of Resource Categories required.

In this instance, describe the typical activities associated with each of the Resource Category types (as defined in SW9).

- 7.5 As required, reserve the organization's right to amend the scope at a later date, to include additional related input or scope parameters, should the need arise due to a change in business or technical requirements.

Inclusion of this right, as accepted by the Bidder in the submission of its Proposal, provides an enforceable legal option the organization can exercise, where a *legitimate* need may arise in the future. Amendments to the scope of work are, by definition, *a surprise*. This provision identifies the potential for additional requirements to occur within the scope resulting contract, but must *not* be used to avoid competitive processes or bypass levels of delegated signing authority. Any item that is anticipated as a requirement at the time the RFP is developed should be included within the RFP document.

SW8.0 DELIVERABLES

The Deliverables section clearly identifies the tangible products or outcomes that the Contractor is required to produce in order to receive payment (ie. "Outputs"). In accordance with *Contracting Policy*, payment should be made only for satisfactory completion of a concrete Deliverable or delivery of a service.

Similar to the Scope of Work (SW7), the structure of Deliverables SW8 is dependent upon the type of resulting Contractual mechanism. Contract/Call-ups will have clearly defined Deliverables and delivery dates, whereas SOA's and SA's will identify the anticipated types of deliverables associated with the work to be undertaken. TA Contracts will contain a combination of the two.

This section will link to any milestones/phases identified in the Scope of Work and intersect with the contract Basis of Payment. Clearly identify the structure of the resulting mechanism - does the outcome of the work consist of:

- a) A single Deliverable to be paid by one (1) invoice upon completion;**
- b) A single Deliverable comprised of multiple milestones and thus multiple ‘progress payments’ against completed milestones; or**
- c) More than one Deliverable, each of which may consist of more than one milestone with one or more invoice payments.**

8.1 Clearly identify the required Deliverable(s). This should include the Deliverable Name, Description of its contents, the format (dependent upon the type of Deliverable, this could include: hard and/or soft copy and required software, size, structure - e.g. ‘Glossy’) in which it is required, number of copies/deliveries, language(s) of delivery, and the date or time period following Award when the delivery is required.

For anticipatory mechanisms (i.e. SOA’s/SA’s), clearly identify whether the contents, format, number and language will be constant (i.e. specified in the RFP) or identified in the Call-up/Task Authorization.

8.2 For Deliverables with milestones, provide a description of the milestone, including a date or time period following Award when this milestone is required to be completed.

To mitigate the potential for confusion or dispute at the Contract Stage, clearly identify when payment will occur and whether the organization will dictate the amount of payment (as a percentage of the overall contract value) or whether Bidders are required to propose a percentage of the overall value that this delivery will be worth. This information provides the basis for evaluating Contractor performance against the completion of the work in the event of dispute or ‘stop work’ orders, to enable the organization to clearly identify what has been received (and completed in accordance with the approach and methodology SW10 and any required performance standards SW11) and how much is owed to the Contractor.

8.3 Clearly identify when payment will occur for the Deliverables (i.e. at the end of the Contract; upon receipt of the Deliverable; upon completion of the milestone; monthly; or otherwise). Payment is always conditional upon the satisfactory acceptance of the Deliverable(s) by the Project Authority. Clearly state this condition here.

- 8.4** Direct the Bidders/Contractor(s) to the subsequent sections of the SOW that will govern *how* the work is to be completed. This enhances the enforceability of the resulting mechanism at the Contract stage by clearly linking the completion of the Deliverables to the required resource quality, approach, performance standards, communications requirements, etc. The subsequent sections are critical at the Contract stage and form an obligation on the Contractor in the successful completion of the work.

SW9.0 CONTRACTOR RESOURCE REQUIREMENTS AND QUALIFICATIONS

Contractor Resource Requirements and Qualifications section identifies, in part, *how* the Contractor is required to undertake the work, by identifying the type of people (skill sets) the Contractor is required to deploy and an approximate division of labour or accountabilities for activities associated with each of the Contractor's resources for the completion of the work. At the RFP stage, this section provides guidance to the Bidders vis-à-vis the organization's requirements and expectations; and it will also establish a foundation for developing selection and evaluation criteria within the RFP. At the Contract Stage it will be used to assess the suitability of the Contractor's deployed resources, providing the organization with a measure of enforceability for qualifications, in addition to providing enforceability for availability and replacement of named resources.

- 9.1** Clearly identify the Resource Category(ies) required, including the number of resources required within this Category within the resulting contract, and their level of seniority vis-à-vis the other Categories required. The number of resources required at Contract stage may differ from the number of resources Bidders are required to propose at RFP stage -dependent upon the length of the Contract, type of requirement and whether there is a need to identify named resources (see also 9.2 below).

Each Resource Category should be described in two (2) parts:

- a) a description of the Resource Category's role and activities in the resulting work - This should NOT be written as a traditional "job description" (to avoid any appearance of an Employer-Employee relationship); and

- b) a description of the minimum required qualifications for an individual within the Resource Category to successfully undertake the work - Try to highlight the *actual* qualifications, skills, experience and knowledge genuinely required by the Contractor's key resources needed to successfully and competently undertake the work, as described within the SOW. *Note:* In some cases, qualifications, experience and/or skill sets may not be specific to any one Resource Category. As needed, identify any specific skills/experience the Contractor, in general, is required to possess in order to complete the work. This information will also inform the development of the selection and evaluation criteria.

- 9.2 Clearly identify whether the resulting contract will allow for the completion of work by named resources only (i.e. only those individuals proposed and screened can complete the work) or whether any resource may be provided by the Contractor provided that he/she meets the established requirements. If the former, in the event these resources are unavailable, the Contractor will be ineligible to receive the Contract/Call-up.

This decision will impact the development of the selection and evaluation criteria. A requirement for only specific named resources to undertake the work will necessitate a requirement for Bidders to identify specific individuals within their proposal(s) and for their qualifications to be evaluated by the organization at the RFP Stage. Where resource identification will take place at a later stage (e.g. as in some anticipatory mechanisms), the minimum qualifications identified in 9.1.b will set the bar for the future determination of the acceptability of these resources.

- 9.3 Identify whether the replacement of Contractor resources (whether due to illness or other unforeseen events, or based on flexibility of resource identity, as per decisions made in 9.2 above) is acceptable over the life of the resulting contract. Clearly identify whether resource replacements are only permissible in exceptional circumstances. If replacement resources will be allowed, prescribe the protocol by which resource changes and/or substitutions will be allowed; including definition of a time frame within which replacement resources will be available to commence the work, and any requirement for the Contractor to ensure continuity of service or knowledge transfer among its resources, and at whose cost (Contractor's or organization's). Regardless of circumstance, clearly state that the suitability and acceptability of Contractor resources is at the exclusive opinion of the Project Authority. Reserving this right can mitigate the potential for future dispute.

- 9.4** As required, for anticipatory mechanisms, identify any rights the organization wishes to retain to add additional Resource Categories and/or additional named resources to the SOA/SA. Legal rights of the organization should be specified in advance and are accepted by the Contractor (based on submission of their Proposal at the RFP stage). If needed, this option can provide flexibility to the Project Authority to include additional related Resource Categories, as needs arise, over the duration of the Agreement.

SW10.0 APPROACH AND METHODOLOGY

The Approach and Methodology describes *how* the Contractor will specifically go about the completion of the work under the resulting contract. Typically, in Performance-based SOW's, and to mitigate the risk of liability for the organization in the event of dispute or poor performance under the Contract, the Contractor is required to provide its own specific methodology for the completion of the tasks and deliverables. Bidders submit a proposed Approach and Methodology as part of their Proposal, which may be evaluated in the selection and evaluation criteria, and which, upon acceptance of the Proposal by the organization, becomes enforceable in the resulting contract.

Dependent upon the requirement, there may be portions of the Approach and Methodology that need to be prescribed to ensure conformity of the Contractor's work with existing GoC, industry, or discipline standards; or existing methodologies used within the organization. Where this is the case, take care to ensure that only those portions of the method that are essential are prescribed, and that the Contractor retains creativity for innovation, and thus liability, for the implementation of its methodology and the resulting outputs.

- 10.1.a** Describe any obligation the organization is imposing upon the Contractor with respect to the Approach and Methodology to be used in the resulting work.
- 10.1.b** Clearly identify whether the Contractor is required to fulfill the work in accordance with its own methodology and what portions of the work this method must address. Regardless of the flexibility provided to the Contractor/Bidders, all work must be completed in accordance with industry accepted methodologies and approaches.
- 10.2** *Where the Contractor is required to provide its own approach and methodology, identify whether this must be included within the Contractor's Proposal. If yes, selection and evaluation criteria can be developed to evaluate the aspects of the methodology that are of greatest risk to project success.*

- 10.3** Clearly identify the obligation on the Contractor to meet the requirements of the SOW, using this methodology (as described in 10.1 and 10.2 above) in a manner that is in compliance with the Performance Standards and Quality Assurance requirements of the resulting contract (described in SW11). This strengthens the link between these elements of the SOW, and provides for enhanced enforceability of the resulting contract.
- 10.4** In addition to project/work specific methodologies, approaches and standards, identify the Contractor's obligation to ensure that all work undertaken is in compliance with all applicable legislation, Acts and codes.
- 10.5** Identify the Contractor's obligation to ensure that its resources are adequately trained to fulfill their responsibilities under the contract and shall operate at all times in compliance with the law.

SW11.0 PERFORMANCE STANDARDS AND QUALITY ASSURANCE

Beyond the physical completion of Deliverables (SW8) within the Scope (SW7) of the contract, the Performance Standards and Quality Assurance section of the SOW identifies the organization's expectations for the *outcome* of the work, or, the *level* of 'performance' required of the Contractor.

- 11.1** Within any contract, there is an inherent performance standard that failure on the part of the Contractor to complete the required Deliverables (as defined in SW8) will result in the withholding of payment and/or determination of breach of contract and/or default on the part of the Contractor. Clearly identify this expectation and the associated role of the Project Authority who is responsible for determining the compliance of Contractor Deliverables with the Performance Standard of responsiveness, timely completion and quality work. In the event of dispute, this section must be clear enough to enable the withholding of payment under the contract for poor performance.

The inherent Performance Standard is typically sufficient for most contract requirements. Dependent upon the nature of the requirement, additional Performance Standards and Quality Assurance requirements may be needed to define any processes whereby the Contractor may be provided with incentives to reward performance beyond a minimum required standard and/or assessed penalties for failure to comply with the minimum requirements (e.g. service levels) of the work.

Incentives (i.e. bonus payments) should only be applied in cases where the Contractor's ability to exceed the minimum baseline (defined Performance Standard) results in a real, measurable and meaningful financial or operational benefit for the Crown. Penalties should only be assessed where failure on the part of the Contractor to meet the minimum baseline (defined Performance Standard) results in a real (generally financial) loss to the Crown due to reduced client service provision by the organization, costs of re-work, or significant project delays resulting in increased expenditure by the organization. Areas where Penalties and/or incentives may be applicable include:

- Speed/timeliness of service delivery or work completion;
- Technical conformity of the work to specification (i.e. accuracy and completeness);
- Accessibility of the Contractor (e.g. for Client Services contracts);
- Client satisfaction with the Contractor's level of service (as assessed by a client satisfaction index);
- Ability to deliver in the language of stakeholders; etc.

11.2.1 Where a Penalty or Incentive will be assessed, clearly describe the element of the Contractor's service that will be measured. Describe the specific obligation for performance that is being imposed on the Contractor.

11.2.2 Clearly identify the benchmark or baseline level of service that is required in relation to the service element identified.

11.2.3 Describe when the Penalty/Incentive will be applied. Is every transaction equally eligible for Penalty/Incentive (transactional), or will performance be assessed against work completed over a defined period of time (cumulative)? If cumulative, identify at what interval (e.g. monthly, quarterly, etc.) the penalty/incentive could be applied.

11.2.4 Identify the compliance standard associated with the benchmark/baseline level of service. How often is the Contractor required to perform to baseline (i.e. every time or a defined percentage of times)?

11.2.5 Identify whether there are any exceptions that will be made to the application of a penalty or incentive due to circumstances beyond the Contractor's/organization's control (for example, natural disaster, etc.).

11.2.6 Identify the amount the Contractor will be penalized/rewarded for performance below/above compliance with the benchmark/baseline level of service. For Penalties, this should consist of a percentage of the overall value of the contract that is reasonable and directly related to the organization's actual loss sustained as a result of the Contractor's error/omission. For Penalties that are cumulative (i.e. measured over a period of time - see 11.2.3 above), identify whether a given percentage of transactions within that time period will be assessed for the Penalty, or whether all transactions over the cumulative period will be assessed.

Incentive amounts should be based on a percentage of the overall value of the benefit acquired by the organization for the Contractor's performance above the specified standard.

11.2.7 For Penalties, clearly identify the point at which failure on the part of the Contractor to perform to standard will constitute a breach of contract, and direct the Contractor/Bidder to the applicable section in the Terms and Conditions.

11.2.8 Prescribe the schedule within which the Project Authority will undertake to verify the Contractor's adherence to the Performance Standard (i.e. whether pre-defined time periods, or 'periodically').

11.2.9 Identify any obligation on the part of the Contractor to provide records or other data to support the organization's monitoring and measurement of Performance.

11.2.10 Identify the legal rights/obligations of the organization with respect to the statute of limitations on the application of Penalties. Failure on the part of the organization to measure Contractor Performance in accordance with the defined schedule/within the specified period will waive the organization's right to apply a penalty. Conversely, Incentives that are assessed as owing cannot be withheld due to delays on the part of the Crown to conduct the assessment.

11.3 Identify any other industry, government or internal Performance Standard which must be followed in the course of the work. In addition to the requirement for Contractor Performance, there is an inherent Quality Assurance Standard associated with all Contracts.

11.4 Clearly state the Contractor's Quality Assurance requirement for work to be completed in conformance with the Deliverables (SW8), in a timely fashion and in a reasonable manner, consistent with generally recognized standards for quality work in the field of the service requirement.

11.4.1 Dependent upon the work, identify any external Quality designation or certification required to provide assurance that any specialized Contractor's quality processes will be enforced in the resulting contract.

11.4.2 As required, identify any specific aspects of the work to be undertaken for which the Contractor will be required to provide its own Quality Assurance methodology.

This can be linked to the selection and evaluation criteria, wherein Bidders can be evaluated on their method for meeting this requirement.

SW12.0 REPORTING AND COMMUNICATIONS

Reporting and Communications section describes the obligations on the Contractor to maintain contact with the organization during the resulting contract. It also identifies any specific reports or other updates the Contractor will be required to provide during the course of the work, that are necessary to ensure project oversight and control, but are not in themselves, Deliverables as defined in SW8.

12.1 Clearly identify the Contractor's obligation to adhere to the Reporting and Communications Requirements, in addition to the Deliverables specified in SW8.

12.2 Describe the Contractor's general Reporting obligation to keep the organization informed of progress, status and completion over the course of the work. Identify how these reports may be delivered (e.g. orally, written, etc.), and whether there is a specific timeline for submitting status reports.

12.3 As required, describe any special Reporting Requirements that are specific to the work being undertaken (e.g. timesheets; activity reports; financial statements; etc.). For each Report type required, clearly identify: the Report format (oral or written); frequency; and content. If Reporting Requirements must be completed in existing organizational templates, copies of these templates may be provided within Annex B of the SOW, or provided upon Award. For anticipatory mechanisms, identify whether the content and format of Reports may be identified in any resulting Call-up, or as determined by the Project Authority.

12.4 Clearly describe the Contractor's general Communications obligation of accessibility, responsiveness, and the need to keep the organization informed of any issues, as they arise.

- 12.5 Identify any specific requirements for Meetings with the Project Authority that will take place during the resulting work. As required, identify meeting topics, timelines and locations. For anticipatory mechanisms, identify whether the Meetings may be identified in any resulting Call-up, or as determined by the Project Authority.**

SW13.0 RISKS AND CONSTRAINTS

Just as there is an inherent opportunity for profit, the act of entering into a contract creates an inherent risk of loss on the part of the Contractor. This potential is understood by Bidders as part of the process in engaging in business.

The Risks and Constraints section of the SOW operates at the RFP stage to inform Bidders of any unusual or exceptional risks and/or constraints beyond those inherent in undertaking a contract. As required, be sure to identify in this section any unique or specific Risks and Constraints related to the work that are known or are reasonably expected to occur. Be careful not to overstate or understate the Risks of the work. Overstating a Risk may potentially dissuade Bidders from submitting a Proposal or lead to inflated rates, while understating places a risk on the organization for liability should the Risk later be incurred by the Contractor. If no Risks and/or Constraints are reasonably anticipated, remove this SOW section.

This section identifies potential risks (real or perceived) that could incur in undertaking the work, and any operational constraints that could impact the ability of the Contractor to complete the work and/or require consideration in the Contractor's methodology. At the Contract stage, identification of any Risks and Constraints in the SOW provides a degree of legal protection for the organization. Should any Risk that has been identified befall the Contractor, or should a Constraint impede the Contractor's ability to complete the work; previous transparency and disclosure of these items in the SOW can mitigate the organization's liability, as the Contractor has been informed of their potential and has accepted this in its offer to enter into and acceptance of the contract.

- 13.1 Clearly define the terms Risk and Constraint. A Risk is an unusual or exceptional peril (e.g. legal, physical, financial) that could befall the Contractor in the course of undertaking the work. A Constraint is an operational reality within the organization's environment that may impede the Contractor's ability to complete its work.**

13.2 Describe the specific Risk(s) (e.g. risk of physical harm, risk of third party litigation, etc.) that has the potential to occur. Clearly identify the responsibility of the Contractor to take appropriate measures to mitigate the aforementioned risk.

13.3 Describe the specific Constraint(s) (e.g. restricted access, time constraints, etc.) that is known or likely to impede the Contractor's work. Clearly identify the responsibility of the Contractor to take appropriate measures to work within the Constraint(s).

If the Work under the resulting mechanism consists of planning and scoping for a future contractual requirement, it may be necessary to restrict the Bidder's ability to participate in any future related work. As needed, include one or more of the following sections. Most organizations maintain standard contract terms and conditions relating to Confidentiality. If there is a requirement for specific measures relating to Confidentiality, Non-Conflict of Interest or Non-Participation, discuss your requirements with Materiel Management and/or Legal Services.

13.4 Identify any special requirements for the Contractor to certify that it will maintain Confidentiality, maintain a Conflict of Interest Free status, and/or is precluded from bidding on future requirements.

SW14.0 CONTRACTOR RESPONSIBILITIES

Beyond the Contractor's responsibility to complete the work under the contract in accordance with any defined methodology, performance standards and constraints, there may be other specific items the Contractor is responsible to provide/ensure while completing the work. Contractor Responsibilities are itemized to help mitigate the risk to the organization of an employer-employee relationship arising under the contract. Please note: although the relationship between the organization and the Contractor may be well defined in the SOW, it is critical to ensure that this risk is not incurred in how the relationship is operationalized *in practice* in the resulting contract.

14.1 Identify the Contractor Responsibilities related to coordination and management of the work under the resulting contract . As required, these include: responsibility for own travel arrangements, coordination with organization personnel and other stakeholders, coordination with other Contractors, etc.

- 14.2** Clearly identify and describe anything unique the Contractor is required to bring to the work. This could include requirements for the Contractor to provide its own special tools or equipment. Clearly identify *who* (Contractor or organization) will be providing computers, software, databases, etc. to complete the work.

SW15.0 GOVERNMENT REPRESENTATIVE AND SUPPORT

This section identifies the responsibilities or commitments on the part of the organization to support the Contractor in the successful completion of the work.

It identifies authorized representatives of the organization to whom the Contractor will report during the period of the contract. Distinctions are often made between the “Project Authority” and the “Contracting Authority”. It also identifies any specific items or services the organization will provide to the Contractor, as needed, to complete the work.

- 15.1** Describe the role, responsibilities and authorities of the Contracting Authority and when this individual will be identified (e.g. upon Award, upon Call-up, etc.).
- 15.2** Describe the role, responsibilities and authorities of the Project Authority and when this individual will be identified (e.g. upon Award, upon Call-up, etc.).
- 15.3** Clearly identify any organization-furnished equipment, facilities, information and personnel that will be made available to the Contractor in support of its work related to the contract.

SW16.0 LOCATION OF WORK AND TRAVEL

Location of Work and Travel specifies the geographic location(s) where the organization requires the delivery of services and whether/how any requirements for Contractor travel will be reimbursed by the organization under the resulting contract.

- 16.1** Define where the Contractor’s work will take place (i.e. at either facilities identified by the organization, or at facilities of the Contractor’s choosing, or both). If work will take place at organizational facilities, describe their location.

- 16.2** Clearly identify any requirement for the Contractor to travel to locations other than the organization's place of business. If possible, specify anticipated locations, frequency, duration, number of resources, and schedule. Clearly describe any requirements for travel to locations that may be considered a Remote or 'Hardship' posting and any risks associated with such travel. If specific details are not yet known, provide enough information to identify the requirement. Identify whether no travel is anticipated under the resulting contract.
- 16.3** Identify whether the Contractor will be reimbursed for travel and/or living expenses to/from locations other than the organization's usual place of business. If travel is required, identify the Contractor's obligation to comply with the TB Travel Directive with respect to the reimbursement of expenses.
- 16.4** Identify whether funding for travel will be added to the Contract upon Award or whether the Contractor's Proposal will form an estimate for travel costs. (If the latter, amounts for travel can form part of the evaluation process).
- 16.5** Describe any requirements for travel abroad, including special requirements for visas, vaccinations; and whether/how any such costs will be reimbursed, as applicable.

SW17.0 LANGUAGE OF WORK

Specifies the Contractor's obligations and service delivery requirements with respect to the language of work. Depending upon the type of service, for federal departments, Contractors may be required to comply with requirements of the *Official Languages Act*.

- 17.1** Identify the organization's requirements under the *Official Languages Act* and any resulting obligation on the Contractor for the language of communication.
- 17.2** As required, identify the required language of work (English, French or both, or other).
- 17.3** Identify any other requirements or benefits for the Contractor to possess proficiency in other languages, and clearly describe the type (written, oral, etc.) and level of proficiency. Identify whether other languages are a requirement of the work, or a 'nice to have'.

SW18.0 SECURITY REQUIREMENTS

This section of the SOW identifies requirements for the Contractor to comply with the organization's requirements under the Government of Canada *Security Policy*. A Security Requirements Checklist (SRCL) may also be required by your organization and it is suggested to contact Materiel Management to determine what is needed.

- 18.1 If required, identify the required level(s) of Security Clearance for Contractor Resources.
- 18.2 Identify when the Contractor's resources will be required to possess Clearance (e.g. at time of Proposal submission, prior to Award, prior to Call-up, etc.). Identify whether the organization will sponsor Contractor resources not currently in possession of a clearance.
- 18.3 Identify any requirement for the Contractor to possess a facility or DOS (i.e. organization/facility) screening and when this clearance is required. Identify whether Award of the contract is conditional upon the successful completion of this screening.
- 18.4 Describe any obligations on the part of the Contractor to safeguard government assets (documents, etc.) while conducting work on-site and/or off-site.

SW19.0 INTELLECTUAL PROPERTY/COPYRIGHT

This section of the SOW indicates which party will own or have rights to the existing intellectual property used to complete the work (referred to as "Background" - normally what is supplied by either the Contractor or the Department), and which party will own or have rights to any new intellectual property created as a result of the work (referred to as "Foreground").

As a variety of pre-defined and often highly technical clauses are used in this section, employees should always seek input from Materiel Management prior to finalizing this section.

SW20.0 GREEN PROCUREMENT AND SERVICES

This section of the SOW identifies requirements for the Contractor to comply with the organization's requirements under the *Policy on Green Procurement*.

- 20.1 Identify any specific environmental requirements (e.g. use of recycled materials, etc.) for the Contractor's work.**

SW21.0 COMMENCEMENT, DURATION AND AWARD

This section of the SOW identifies the legal time frame for the resulting contract mechanism and the commencement of work under the agreement.

- 21.1 Identify the time period of the resulting mechanism, from the date of legal Award to the specific end date or within a specified duration.**
- 21.2 Identify any rights reserved by the organization to extend the period of the resulting mechanism, and for what duration.**
- 21.3 For anticipatory mechanisms, identify when work will commence under the resulting mechanism (i.e. upon Award of a Call-up) and describe the process whereby Call-ups will be initiated (e.g. by direct contact with the Contractor, via a competition among suppliers qualified to the mechanism), including any limitations and/or specific requirements or obligations on the part of the Contractor to respond to the organization.**

SW22.0 CONTRACTOR'S PROPOSAL

This section of the SOW incorporates the Contractor's Proposal into the resulting contract. This ensures the organization's ability to enforce the Contractor's commitments made at the RFP stage in the resulting Contract.

Example:

22.0 The Contractor's proposal _____, insofar as it is not in variance with anything contained herein, shall apply to and form part of this Agreement.

SW23.0 INSURANCE/WARRANTIES

This section of the SOW identifies any legal obligations imposed on the Contractor in the resulting mechanism vis-a-vis the need to indemnify the Crown (i.e. insurance), or the need to offer a warranty or guarantee. Most organizations maintain standard terms and conditions for insurance and warranties. It is suggested to contact Materiel Management and/or Legal Services to discuss any special requirements.

- 23.1 As required, describe the type of insurance required, and whether the Contractor is expected to indemnify the Crown, and to what extent.
- 23.2 As required, describe any limitation on Contractor liability under the resulting contract.
- 23.3 As required, identify any specific liabilities the Contractor will be required to accept in completing the work under the contract.
- 23.4 As required, for goods and/or maintenance services, etc. identify any specific warranty or guarantee requirements, what is covered under the warranty/guarantee, to what standard, and for what time period.

ANNEX A TASK AUTHORIZATION/CALL-UP FORM

For anticipatory mechanisms, this Annex to the SOW contains the standard form that will be used by the organization to engage the Contractor's services. Organizations may possess pre-defined standard forms for this purpose, or may wish to develop their own, for the purpose of identifying specific work requirements unique to the service type.

ANNEX B REPORT TEMPLATE/OTHER

As required, Annexes may be attached to the SOW containing any standard Reporting forms the Contractor is required to use, and/or other informational documents pertinent to the completion of the work of which both Bidders and the Contractor should be aware.