



Best Practices: Drafting Statements of Work and Technical Schedules

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SOWs and Technical Schedules

▶ Overview

- ▶ A **statement of work (SOW)** is a document that describes in detail the services to be performed and deliverables to be delivered.
- ▶ Other **technical schedules** document other details of a party's performance such as service levels (SLA) or maintenance and support obligations.
- ▶ SOWs/Technical Schedules detail critical elements of the contract -- the failure to properly document the performance elements is often the reason parties end up in dispute.

SOWs and Technical Schedules

- ▶ Elements of a SOW
 - ▶ Scope of work (tasks, development effort)
 - ▶ Pricing and payments (amount, timing, expenses)
 - ▶ Roles and responsibilities (assumptions)
 - ▶ Deliverables (product, reports)
 - ▶ Schedule for performance/delivery (milestones)
 - ▶ Acceptance criteria
 - ▶ Change order process

▶ Other Technical Schedules

- ▶ Transition Plans (critical milestones/acceptance criteria)
- ▶ Data Security Requirements
- ▶ Network Access Policies
- ▶ Project Staff Screening Requirements
- ▶ Customer/Vendor Equipment and Software
- ▶ Business Continuity and Disaster Recovery Plan
- ▶ Vendor Update/Refresh
- ▶ Technical Architecture and Product Standards
- ▶ Oversight/Management Process
- ▶ Service Levels (SLAs, SLCs, Critical Services)
- ▶ Pricing
- ▶ Reports
- ▶ Early Termination Fees
- ▶ Termination Assistance Services

SOWs and Technical Schedules

- ▶ Potential problems with SOWs/Technical Schedules
 - ▶ Too general
 - ▶ Reads like marketing/promotional materials
 - ▶ Not treated as part of the contract
 - ▶ Conflicts with main agreement
 - ▶ Doesn't "fill in" all blanks left open in main agreement

SOWs and Technical Schedules

- ▶ *What takes precedence and controls?*
 - ▶ Main Agreement – generally negotiated with contract/legal review and approval
 - ▶ SOW/Technical Schedules – generally negotiated by business team, but more details on performance
 - ▶ Establish Default – Main agreement controls unless a provision in the SOW/Technical Schedule expressly states that it is intended to supersede
 - ▶ What is and is not a conflict?

SOWs and Technical Schedules

- ▶ Real Life Example #1
 - ▶ Main agreement heavily negotiated as to payment milestones, specifically tied to functionality that would be available for Release 1, Release 2, etc.
 - ▶ In draft SOW, payment milestones were set up as time-based only and identified only final deliverable without identifying what functionality was to be included in any of the interim “Releases”

SOWs and Technical Schedules

- ▶ Real Life Example #2
 - ▶ Client procuring software installation, integration and configuration services for new platform – fixed fee of @\$75,000 in software and @\$100,000 in services
 - ▶ Main agreement negotiated in detail as to software license and for Contractor to perform services in SOW
 - ▶ Contractor's draft SOW included only bullet points identifying monthly meetings, reports, training and 1-year term – no mention of platform's performance, end result of the services, or any milestones for various activities

SOWs and Technical Schedules

- ▶ Real Life Example #3
 - ▶ Vague or subjective performance obligations
 - ▶ *“complies with the specifications and performs to [Buyer’s] satisfaction”*
 - ▶ *“provide engineers, installers and/or consultants to assist [Company] with post-sales support”*

SOWs and Technical Schedules

▶ Practice Tips

- ▶ Train business team on importance of these schedules and things to consider in drafting them
- ▶ Create a checklist of items referenced in the main agreement to be specified in the schedules
- ▶ Consider and document what takes precedence and controls -- avoid conflicting provisions
- ▶ Be consistent in the use of definitions and other terminology
- ▶ Contract/legal review of SOW

SOWs and Technical Schedules

- ▶ Practice Tips
 - ▶ Use performance-based requirements, when possible
 - ▶ Requirements/specs to be stated quantitatively (how many) and qualitatively (how perform)
 - ▶ Requirements must be verifiable (objective standards)
 - ▶ Generally, identify “what” is to be built not “how” to build it

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