

CHAPTER 9 – SPECIFICATIONS & STATEMENTS OF WORK

9.1 GENERAL

This chapter describes the development of specifications and statements of work (“SOWs”)¹ and their uses in procurement. Properly prepared specifications and SOWs enhance competition and clarify the relationship between contractors and PHAs, resulting in improved contract administration.



9.2 REGULATORY REQUIREMENTS

2 CFR 200.319(a) states that all procurement transactions must be conducted in a manner providing for full and open competition². To comply with this requirement, specifications or SOWs must not restrict competition for the reasons including, but not limited to, those listed at 2 CFR 200.319(b)(1-7). SOWs are also required for noncompetitive procurements.

Furthermore, per 2 CFR 200.319(d)(1), when creating specifications or SOWs for solicitations, competitive or otherwise, PHAs must incorporate a clear and accurate description of the technical requirements for the material, product, or service they want to procure. This means the specification or SOW must set forth the minimum essential characteristics and standards to which the material, product, or service must conform to satisfy its intended use. However, PHAs must avoid establishing these minimum essential characteristics solely by relying on a brand name. This “brand name” requirement is described in more detail in Section 9.3 below.

In addition to the substantive requirements for specifications and SOWs established in 2 CFR 200.319(d)(1), PHAs must include the aforementioned requirements in their written policies and procedures for procurement transactions.

¹ “Scope of work” is a common synonym for “statement of work.” This Handbook primarily uses “statement of work.” However, any reference to “scope of work” refers to the same type of document, and PHAs may choose what they wish to call this particular kind of specification.

² Please note the exception by the HUD Appropriations Act for Fiscal Year 1992, which allows PHAs to purchase insurance coverage without competitive selection procedures when they purchase it from a nonprofit insurance entity owned and controlled by PHAs approved by HUD in accordance with standards established by 24 CFR 965.205.

9.3 SPECIFICATIONS

A specification is a detailed description of materials, supplies, equipment, pre-cuts, or construction work that tells vendors what the PHA wants to procure.

- A. **Specification Types.** There are three types of specifications that PHAs may use to prepare solicitations and contracts for equipment, supplies, or construction: functional or performance specifications, design specifications, and brand name or equal specifications. These categories are described in more detail below. However, specifications rarely fit into only one category. Most specifications contain a combination of design and performance requirements and may include brand name or equal descriptions as well.
- 1) *Functional or Performance Specifications.* These specifications describe the item's desired performance characteristics or identify how the item works. Detailed design criteria or exact measurements are not stated.
 - a. Functional or performance specifications are inherently risky because they only vaguely articulate what the PHA wishes to procure. This vagueness gives contractors leeway to meet the specification's minimum requirements without taking other important factors that are not described in the specification into account. This may impede the PHA's ability to select the most suitable offer because it may make it more difficult for the Contracting Officer to discern and appropriately weigh every deciding factor. For example, a performance specification for a new boiler can call for a gas-fired hot water boiler that will produce 100,000 British Thermal Units (BTU) per hour. It is easy to imagine a gas-fired boiler that can match this specification, but that may also require continuous and costly maintenance.
 - 2) *Design Specifications.* Design specifications describe the exact characteristics of the PHA's desired item. Design specifications may be as detailed as needed. Depending on the nature of the item, the design specifications may contain precise measurements, tolerances, materials, product tests, quality control, and other detailed information. The information furnished in the specification should be sufficiently detailed to ensure that all items manufactured to the specifications will be virtually the same. A detailed description of kitchen cabinets, giving dimensions, fastening details, materials, and hardware, is one example of this type of specification.
 - a. Design specifications are distinct from performance specifications because they are much more specific. Performance specifications simply describe the desired performance threshold for an item, while design specifications give much more additional precise information that allows vendors to determine whether they can provide the required item and thus should submit a bid.
 - 3) *Brand Name or Equal Specifications.* Per 2 CFR 200.319(d)(1), PHAs must only use "brand name or equal" specifications in limited situations "when it is impractical or uneconomical to make a clear and accurate description of the technical requirements" for the item the PHA is seeking to procure. In these circumstances, PHAs may use a "brand name or equivalent" description to define the item's performance or other salient requirements that the item must satisfy to comply with the PHA's desired procurement. Per 2 CFR 200.319(b)(6), when a PHA

uses brand name products in specifications, the words “or equal” and a description of the item’s essential characteristics must follow the brand name. Additionally, PHAs must inform vendors that they are only using such references to establish a design or quality standard; any other products that clearly and demonstrably meet the standard established by the named brand’s specific features are also acceptable. Descriptions or specifications shall not specify a particular product or feature particular to one manufacturer unless that feature or product is critical to the PHA’s intended use of the item.

- B. **Standardizing Inventory.** Many PHAs standardize their inventory of equipment and parts. PHAs must ensure that any specifications for items that are part of their “standard” inventory comply with 2 CFR 200.319(b)(6) and (d)(1) as described above. For example, a PHA may choose a particular type of equipment or part for a particular function. If the PHA needs to acquire more of those parts or pieces of equipment, the PHA endeavors to procure the same equipment or parts for that function. This is a permitted standardization approach without limiting selections to particular brands. In all cases, PHAs should give all offerors the opportunity to present reasons or data showing their product can meet the PHAs’ stated requirements.
- C. **Avoiding Manufacturers Specifications.** PHAs should avoid incorporating a particular manufacturer’s specifications into their own specifications. This may give the appearance of restricting competition by only permitting the use of that manufacturer’s products and suggest to vendors that the PHAs may not accept other manufacturers’ products. For example, if a PHA specifies a brand name kitchen cabinet with the essential features of solid wood doors and plywood frames, many available brands and styles of cabinets will meet the essential criteria. Therefore, all brands that provide cabinets with these characteristics should be acceptable. However, if for example the PHAs does not include a particular name brand in its specifications but says that kitchen cabinets must measure 3.12 x 1.12175 x 1.5245 and have bronze hinges shaped like bows and only one manufacture makes such cabinets, then the PHA is unduly restricting competition.
- D. **Contractor-Developed Specifications (2 CFR 200.319(b)).** To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that PHAs pay to develop or draft specifications, requirements, statements of work, invitations for bid, or requests for proposals must be excluded from competing in the procurement.

9.4 STATEMENT OF WORK (SOW)

A SOW is a detailed document that clearly defines the specific tasks, deliverables, timelines and requirements for a project or contract. The SOW is commonly used in contracts for both professional services and construction.

- A. **Purpose and Functions of a SOW.** Like specifications, a SOW’s primary purpose is to help offerors understand the PHA’s requirements.
 - 1) SOWs should contain specific details about the service the PHA is seeking to procure (see 2 CFR 200.319(d)(1)). If the SOW does not provide specific details, some vendors may not

respond, either because of uncertainty about the risks involved or because they may not understand the requirements' relationship to their capabilities. This impacts the PHA's ability to garner the best possible services at the best possible price and may also be seen as restrictive to competition.

- 2) Because SOWs establish baseline tasks that are foundational for sound evaluation criteria, they are extremely useful for procuring services under the competitive proposals method described in Chapter 8 above.
- 3) The SOW also becomes useful for measuring contractor performance and resolving disputes during performance. When a question arises over whether an increase in the scope of work is appropriate, the SOW is the baseline document for resolving the question. If the SOW does not provide specific details about the services the contractor will render to the PHA, the PHA's ability to negotiate cost and schedule modifications will be impaired.

B. Elements of the SOW. The particular issues that a SOW will address will vary with the nature, purpose, size, and complexity of the work to be performed. However, at a minimum, every SOW should include:

- Detailed work and task requirements;
- End results and deliverables, including the criteria which a deliverable must meet to be acceptable;
- Delivery schedules/period of performance;
- Any reporting and compliance requirements;
- A precise statement of the work's objectives;
- Contact information for the PHA contact person/contract administrator; and
- Other special considerations (e.g., warranties, personnel and required classifications, testing procedures, and procedural safeguards).