



Procurement, Contracts and Materials Management

Campus Guide to Personal Services Contracts

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Introduction:

Thank you for using this guide to Personal Services Contracts. A Personal Services Contract (PSC) is used to contract for services that are infrequent, specialized, technical, scientific or of a professional nature. When using the PSC, there are many factors that need to be considered before the contract is complete. This document will walk you through these various factors and provide guidance on successfully completing a PSC.

When should a PSC be used?

Types of Services

A PSC is designed for Personal Services, as opposed to Trade Services. Use the following table to identify the different types of services and the appropriate contract type.

Service	Definition	Examples	Contract Type
Personal Service “Office Work”	Specialized, technical, or scientific expertise of a professional nature.	Actuaries, attorneys, consultants, grant writers, physicians, executive recruiters	Personal Services Contract (PSC)
Trade Service “Outdoor/Physical Work”	Skills, knowledge, and resources in the application of manual or mechanical trade labor.	Electrician, farm labor, janitorial, carpenter, lumberman	Supplier’s contract, general services contract, purchase order, or construction contract

Note that some services don't fall into either a personal or trade service. Services provided such as maintenance, equipment rentals, leases, performances, art, or entertainment are neither a personal nor trade service. For these types of services, the PSC is not an appropriate contract mechanism because the contract provisions included in the PSC don't address the nature of those services. If the contractor does not provide a contract, you can use a general services contract or purchase order. If you aren't sure what contract type to use, contact PCMM to determine the appropriate contract mechanism for those services.

Dollar Threshold

A PSC is an excellent tool for outlining the expectations and obligations of both OSU and the supplier. Under PaCS Policy 402-006, a personal service is required above \$5000 and recommended under \$5000, as seen here:

REQUIRED	RECOMMENDED
<ul style="list-style-type: none">Personal services provided by supplier to a department and total cumulative dollar amount exceeds \$5,000¹ within a fiscal year	<ul style="list-style-type: none">Personal services that involve detailed expectations or obligations, even if under \$5,000

¹ If the total cumulative contract dollar amount is above \$25,000, a competitive process is required. See section on Competitive Requirement.

No Dollar Value

The PSC is not intended to contract for services for which no remuneration is involved. If you have this type of arrangement, contact PCMM.

PSC or Supplier's Contract?

PCMM recommends use of OSU's PSC because it puts in place expectations and obligations for both parties within the Statement of Work (SOW) and includes terms and conditions that protect OSU. However, suppliers may want to use their own contract instead of OSU's PSC. While not recommended, OSU may utilize the supplier contract in lieu of the PSC with the understanding that there may be additional risk assigned to OSU in the supplier's contract, and the terms and conditions will need to be reviewed and edited for OSU to sign the contract which will take additional time. Overall, OSU will only sign one contract for the service whether it is OSU's PSC or the supplier's contract.

Critical Considerations

Once it is determined a PSC may be used, there are additional items to consider.

Competitive Requirement

First, calculate the anticipated total cumulative contract amount for the Personal Services. This is calculated by adding the following:

Cost for the entire potential contract term, including:

- Cost for initial term (start date through end date)
- Cost for any potential extensions/renewals
- Cost for any potential future phases (contingent on outcomes or continued funding)



Costs for anticipated travel, or other misc. expenses



Total cumulative contract amount

Once the total cumulative contract amount of the Personal Service is calculated, determine if it requires competition:

<\$25,000	>\$25,000	>\$250,000	Non-Competitive Procurements
Direct procurement threshold	Informal procurement threshold	Formal procurement threshold	For contracts >\$25,000 as detailed in OSU Standard 03-010

If there is **ANY** potential the total cumulative contract amount will go over the next dollar threshold, perform the competitive process for the next threshold, or consult with PCMM on a non-competitive procurement method. Consult PCMM if unclear or uncertain about this process.

If the cost goes over a competitive dollar threshold while work is already being performed under a contract, the following consequences may create a delay in the work:

- Performance of the work should stop for a competitive process
- Sole source cannot be based on work already performed under a contract
- Potential protest situation due to bias for the existing contractor

Independent Contractor Determination

An important aspect of the PSC is ensuring that the supplier is considered an independent contractor rather than an employee. The United States Department of Labor and the State of Oregon have laws governing the classification of independent contractors. The State of Oregon's laws are under Oregon Revised Statute 670.600 with additional clarifying information at the [State of Oregon Independent Contractor website](#).

As noted on the State of Oregon Independent Contractor website: "A worker providing services for pay is generally considered an employee by Oregon regulatory agencies - unless that worker meets the requirements for an independent contractor."

A majority of regulatory agencies in Oregon use the following four requirements from ORS 670.600 when determining independent contractor status:

<u>1. Direction and Control</u> Contractor is free from direction and control over the means and manner of providing the services to OSU. "Means" are resources used or needed in performing services. "Manner" is the method by which services are performed. If OSU controls the means or manner of providing the services, it does not matter whether the contractor actually exercises the right of control.	<u>2. Independently Established Business</u> Must be customarily engaged in an independently established business meeting 3 of the following 5 criteria: a) Has a business location. b) Bears the risk of loss. c) Two or more contracts or advertising. d) Makes a significant investment in the business. e) Has authority to hire/fire other persons in providing the services.	<u>3. Licensed under ORS 671 or 701</u> Licensed under ORS 671 or 701 (Construction Contractors Board, State Landscape Architect Board or I-CB and State Board of Architect Examiners), <u>if required for the service.</u>	<u>4. License Responsibility</u> Responsible for obtaining other licenses or certificates necessary to provide the service.
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If these requirements are not met, generally the worker is determined to be an employee.

One of the most important requirements, and potentially confusing points, is the independently established business aspect and meeting 3 of the 5 criteria listed. Further information about the 5 criteria for independently established business is available here:

- a) Has a business location.
The individual maintains a business location:
 - That is separate from OSU; or

- That is in a portion of the individual's residence and that portion is used primarily for the business.
- b) Bears the risk of loss.
The individual bears the risk of loss related to the business or the provision of services as shown by factors such as:
 - The individual enters into fixed-price contracts;
 - The individual is required to correct defective work;
 - The individual warrants the services provided; or
 - The individual includes indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.
- c) Two or more contracts or advertising.
 - The individual provides contracted services for two or more different entities (outside of OSU) within a 12-month period; or
 - The individual routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- d) Makes a significant investment in the business.
The individual makes a significant investment in the business, through means such as:
 - Purchasing tools or equipment necessary to provide the services; or
 - Paying for the premises or facilities where the services are provided; or
 - Paying for licenses, certificates or specialized training required to provide the services.
- e) Has authority to hire/fire other persons in providing the services.
The individual has the authority to hire other persons **to provide** (this means they may not be the one providing the service) or to assist in providing the services and has the authority to fire those persons.

Additionally for OSU, pursuant to PaCS policy 402-006, an independent contractor also **cannot**:

- Supervise OSU personnel or other OSU hired contractors.
- Be listed as an instructor of record for an OSU for credit course.
- Represent themselves as OSU or make promises on OSU's behalf.
- Drive OSU vehicles.
- Transport students, unless specifically authorized to do so in the contract.

The Independent Contractor Determination Form is required for individuals performing professional services regardless of whether it is on a PSC or PO. The form indicates that answering the questions in a certain manner determines independent contractor status; however, further clarification, follow-up, or documentation may be required to verify the determination.

Here are two scenarios demonstrating how to determine whether some is an independent contractor or employee based on the state of Oregon's four requirements outlined in ORS 670.600:

Scenario A.

Steve Smith, a computer programmer, takes another position outside of OSU. OSU agrees to pay Steve a flat amount to complete a one-time project. It isn't clear how long it will take to complete the project, and Steve isn't guaranteed any minimum payment for the hours spent on the project. OSU provides Steve with no instructions beyond the specifications for the project itself. Steve works at home and isn't expected or allowed to attend department meetings.

In this scenario, Steve is an independent contractor because:

- Direction and Control: He is free of OSU direction and control. OSU is only providing specifications and not the manner or means by which Steve would need to perform the services. Additionally, Steve is not expected or allowed to attend department meetings.
- Independently Established Business:
 - He has a business location that is separate from OSU and is based in his home.
 - He bears risk of loss because the contract is a fixed-price contract, and he would have to fix work that doesn't meet the specifications.
 - He has authority to hire/fire others to perform the services.
- ORS 671 or 700 licenses: This is not applicable in this scenario.
- License responsibility: Payment of a fixed-price contract, without expense reimbursement for certifications or other licenses means that Steve is responsible for his own certification or licensing to do the work.

Scenario B.

Sam Sparks performs lab equipment maintenance services for several OSU departments. He works regular hours and is paid an hourly rate. OSU provides tools and a vehicle for Sam to use while he is repairing OSU equipment. OSU takes repair requests for Sam, and issues instructions on the equipment to be repaired, parts to be used, and the estimated time for completion of each repair job. Sam provides lab equipment maintenance services for other companies as well as OSU.

In this scenario, Sam is an employee because:

- Direction and Control: OSU has direction and control in that it is determining the manner or way in which work is performed by taking equipment repair orders, and by providing instruction, parts and estimates for repair time.
- Independently established business:
 - All the work for this contract is done at OSU rather than a business location that is separate from OSU.
 - He does not bear the risk of loss because he is paid hourly and will be paid for all the time he puts in to repair the equipment. Additionally, he has no investment in tools or a vehicle for work under this contract.
 - ORS 671 or 700 licenses: This is not applicable in this scenario.
 - License responsibility: This is undeterminable within the information provided in the scenario. However, because all requirements must be met and he does not meet the first two requirements there is no need to make a determination for this particular requirement.

Relationships with OSU

When contracting with individuals they may have different relationships with OSU, from being a current or former employee or student, to having a close relationship with OSU staff making procurement decisions. These relationships do not disqualify the individual from being considered, but it does require extra due diligence.

Current OSU Employee

If the individual is a current OSU employee there is potential for a Conflict of Interest if they are involved in writing specifications, selection, award, or administration of a contract that is awarded to themselves or a company in which they hold a financial interest. If a Conflict of Interest is possible, the employee should fill out PCMM's Notice of Real

or Potential Conflict of Interest form and submit it to Procurement for review to determine if an actual conflict exists. If an actual conflict of interest exists, Procurement will work with you to determine if a mitigation plan can be developed that eliminates the conflict. Note that this conflict of interest process is different from the process in the Office of Research.

In addition to conflict of interest, there is additional due diligence required if the work the employee is being contracted to do is similar to what they do in their position at OSU. For this reason, if the work seems like that of an employee, Procurement services will coordinate a review of the statement of work along with the position description provided by Human Resources.

Previous OSU Employee

If the individual was a previous OSU employee, in addition to the considerations for current OSU employees, the length of time between the dates the individual left OSU employment and the start date of the contractual work is considered. An employee who recently left employment and is being hired as a contractor by the same or related department to perform duties that are similar or the same as duties they performed as an employee may indicate a lagging employee/employer relationship that would be coordinated through Human Resources.

Courtesy/Affiliate Faculty Appointment

If the independent contractor has a Courtesy or Affiliate Faculty appointment at OSU, there are additional considerations. An individual with a Courtesy or Affiliate Faculty appointment cannot receive any form of compensation for performing services at OSU. The options for the contracting department are:

- Do not proceed with contract; or
- Request that the department that issued the Courtesy/Affiliate Faculty appointment terminate the appointment and then proceed with the PSC, if the individual is otherwise qualified.

Emeritus Title

An independent contractor who holds an Emeritus title with OSU may perform services on a PSC as long as they meet all other criteria of an independent contractor.

Current OSU Student

If the individual is a current student and otherwise qualifies as an independent contractor, then a PSC may be used.

Completing a PSC

PSC Form

Once it has been determined that a PSC is the best contracting mechanism, and all the critical considerations have been reviewed, the PSC template can be completed. Because the PSC uses standard terms and conditions, it is important the department uses the most current PSC template, which can be obtained from PCMM's website (<https://fa.oregonstate.edu/pacs/faculty-staff>). The template uses orange text to indicate the areas the department will complete. Here is what to look for when completing the template:

Oregon State University
PERSONAL SERVICES CONTRACT (PSC)

Department Contract: Contract # 1

This Contract is entered into by and between Oregon State University (OSU/Institution) for its **Department Name** (Department) and **Contractor Name** (Contractor). 2

Whereas OSU has need of the services which Contractor is competent to provide; now therefore, in consideration of the sum 3 not to exceed \$**Amount** to be paid at the rate of Per/HR **Rate**, to Contractor by OSU, Contractor agrees to perform between 4 date of last signature and **End Date**, inclusive, the following personal and/or professional services: 5

6 7 8 9 10 11

7 Description of Services

Contractor shall not begin work until the Contract is signed by all parties listed below. Unless otherwise specified herein, OSU shall pay only for work performed. Contractor shall submit detailed invoice(s) for work performed to Department for payment. Invoices are paid according the OSU's standard payment terms which are Net 30 days from receipt of correct invoice.

The following attachments are incorporated by this reference and made a part of this contract: Attachment A, OSU Standard Contract Provisions and Attachment B; Attachment C; Other Attachments: **Other Attachments**.

INSURANCE: the minimum limit is \$**Insurance amount** Type required: CGL AUTO Professional

THIS CONTRACT SHALL BECOME EFFECTIVE AND BINDING UPON LAST SIGNATURE BY AUTHORIZED REPRESENTATIVES OF THE PARTIES AS PROVIDED HEREIN.

OSU	CONTRACTOR
OSU Department Head (Typed Name): Department Head Name	Signature Typed Name: Contact Name Address: Business Name Address: City, ST, Zip
OSU Contract Officer	Date Phone: Phone Banner Vendor ID No.: Banner ID U.S. Tax Identification No.: Tax ID Last 4 Contractor is a: (Check One) <input type="checkbox"/> Resident U.S. citizen <input type="checkbox"/> Resident non-U.S. citizen (Green Card Holder) <input type="checkbox"/> Non-U.S. citizen <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Contractor is also a minority group member

Contract Number (1)

Departments may assign their own Contract #, if applicable, otherwise the Contract # will typically be assigned once the form has been submitted in BennyBuy. This will either be the Requisition #, if submitted through the Purchase Request Form, or the Contract #, if submitted through the Contract Request Form.

Department Name (2)

Enter the name of the OSU department that is contracting for the services.

Contractor Name (3)

Contractor's full legal name should be used, without abbreviations. A "doing business as" (DBA) may be used after the contractor's full legal name. If Contractor is an individual, this should match the Contact Name under the Contractor signature line. If this is a company/organization, this should match the Business Name under the Contractor signature line.

Amount (4)

This is where the Not To Exceed ("NTE") amount for the contract will be entered. The NTE sum is the maximum amount of spend for all expenditures under the contract during the initial contract term (start date - end date) specified on the contract. Travel and other expenditures should be incorporated in the NTE, not as separate line items, and not reimbursed directly. The PSC has language around travel expenses for contractors in the terms and conditions.

The NTE amount shouldn't include any amounts that are outside of the initial contract term (start date - end date). If a renewal, extension, phase, or other element of the contract is optional, or will be exercised with an amendment, then the cost for that should NOT be included in the NTE. The cost would be added in an amendment that increases the NTE and authorizes the renewal, extension, or phase.

Rate (5)

This is where the rate of pay can be entered. This is defaulted to a per hour rate but may be adjusted to fit whatever rate is agreed upon. This section may also be updated/removed to refer to a payment schedule listed in the SOW. Other rates of pay include:

- Per hour/week/month for actual hours worked.
- Fixed fee for all services and known expenses.
- List of cost for various services performed under the contract.
- Split fixed payments based on milestone/deliverable completions.

Payment frequency details how often payment to the contractor will happen and what is the triggering event to initiate those payments. Some common frequencies include:

- As invoiced by contractor for actual services completed and accepted by OSU. This is typically associated with an agreed upon invoice frequency, such as monthly or after specific milestones are reached.
- Set timeline established in contract, such as listing dates where payments will be issued.
- At completion of the contractual period and OSU acceptance.
- Split payments, such as 10% of the contractual amount upon contract execution date and the remainder at the completion of the contract.

End Date (6)

The initial contract term begins once all signatures are received, and this indicates when the initial contract term will end.

Description of Services (7)

Otherwise known as the Statement of Work (SOW), the SOW may be entered directly on the first page of the PSC or included as an attachment to the PSC. If included as an attachment, the Description of Services on the first page of the PSC should reference the attachment, such as:

date of last signature and **End Date**, inclusive, the following personal and/or professional services:

See Attachment D Statement of Work

Contractor shall not begin work until the Contract is signed by all parties listed below. Unless otherwise specified herein, OSU

Attachments (8)

The OSU Standard Personal Services Contract Provisions will automatically be included and incorporated in the template as Attachment A. The PSC Standard Terms and Conditions are OSU's base position on mitigating risks to the institution. At times the contractor may want to negotiate segments of the terms and conditions. In this case, the department will need to obtain a redlined version of the terms and conditions from the contractor and have them reviewed by Procurement. Procurement will need to understand the SOW being performed and the level of risk associated. The negotiation of the terms and conditions will be dependent on multiple factors. The department and Procurement will work together to determine what is appropriate.

If there are additional documents to include, such as an attached SOW, make sure the attachments are labeled appropriately, and included in the PSC. The contractor's proposal or quote may be incorporated as an appropriately labeled attachment to the PSC; however, it cannot require a separate signature and/or additional terms that conflict with OSU's Standard Personal Services Contract Provisions. Adding attachments should be done as such:

1. Check the appropriate Attachment checkbox on the first page of the PSC.
2. Enter the title of the attachment next to the Attachment checkbox.

The following attachments are incorporated by this reference and made a part of this contract: Attachment A, OSU Standard Contract Provisions and Attachment B, Consultants Fee Schedule, Attachment C, Revised Insurance Terms, Other Attachments: 1 2 1 2

3. Title the attachment document with the appropriate Attachment Letter and Title.

ATTACHMENT B
Consultants Fee Schedule

2021 FEE SCHEDULE

Protection & Indemnity Claims Services

Handled through our associate company Maritime Claims Associates, LLC.

...

ATTACHMENT C
REVISED INSURANCE TERMS

INSURANCE: Contractor shall secure at its own expense and keep in effect during the term of this Contract:

- a. General Liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, which can be....

Make sure when you add the Attachments, they match what is listed on the first page of the PSC. In other words, title the attachment document with the same attachment letter and title included in the first page of the PSC.

Insurance (9)

The OSU Standard Personal Services Contract Provisions has a clause requiring the contractor to carry commercial general liability insurance, but there are various types of insurance. The front of the PSC form has a spot to include insurance coverage amounts. For general liability insurance the minimum amounts are \$2,000,000 per occurrence and \$4,000,000 aggregate. Departments looking for guidance on exposures beyond general liability, insurance amounts different than the standard, or different types of insurance for the activity, should consult with Insurance and Risk Management Services.

In cases where there is significant risk in the SOW and the department has not worked with Insurance and Risk Management Services to determine appropriate levels, Procurement may have the department coordinate with Insurance and Risk Management Services prior to fully executing the contract.

Department Head Name and Signature (10)

Department will enter the name of the head of the department for which the services will be performed.

Contractor Information and Signature (11)

The Contact Name will be the full name of the individual with authority to enter into the contract on behalf of the contractor. This is either the individual listed as Contractor or an individual at the company or organization who has the authority to sign the contract on their behalf. Next, enter the Business Name, if OSU is contracting with a business rather than an individual. Then enter the address, phone number, vendor ID, and last 4 of Tax ID if known.

Contractor is a... (Check One) (12)

Select one if applicable. If the Contractor is a Non-Resident Alien (NRA), there may be a tax withholding of up to 30%. If this is applicable, the department may pay this tax in addition to the fees agreed to on the contract. Otherwise, this amount will be withheld from the fees. Departments should be aware of this when contracting with NRA contractors.

Statement of Work

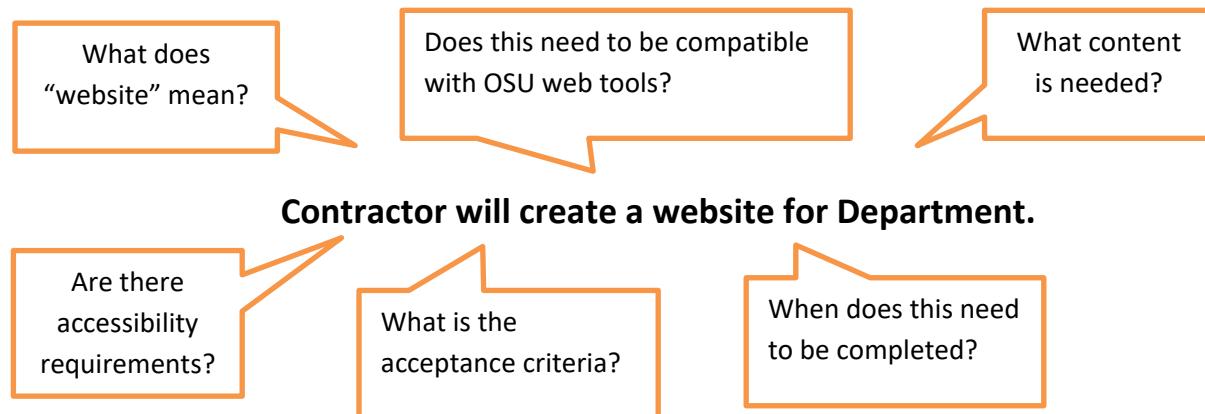
The Statement of Work (SOW) is the core of the PSC. It is essential the SOW is clear, complete, correct, and sufficiently detailed. Issues and consequences of a poorly written SOW include:

Issues	Consequences
• No milestones	• Unclear progress
• No deliverables	• Increased costs
• No timeframes	• Project delay
• No responsibilities	• Performance issues
• Prescriptive manner of work	• Independent contractor issues

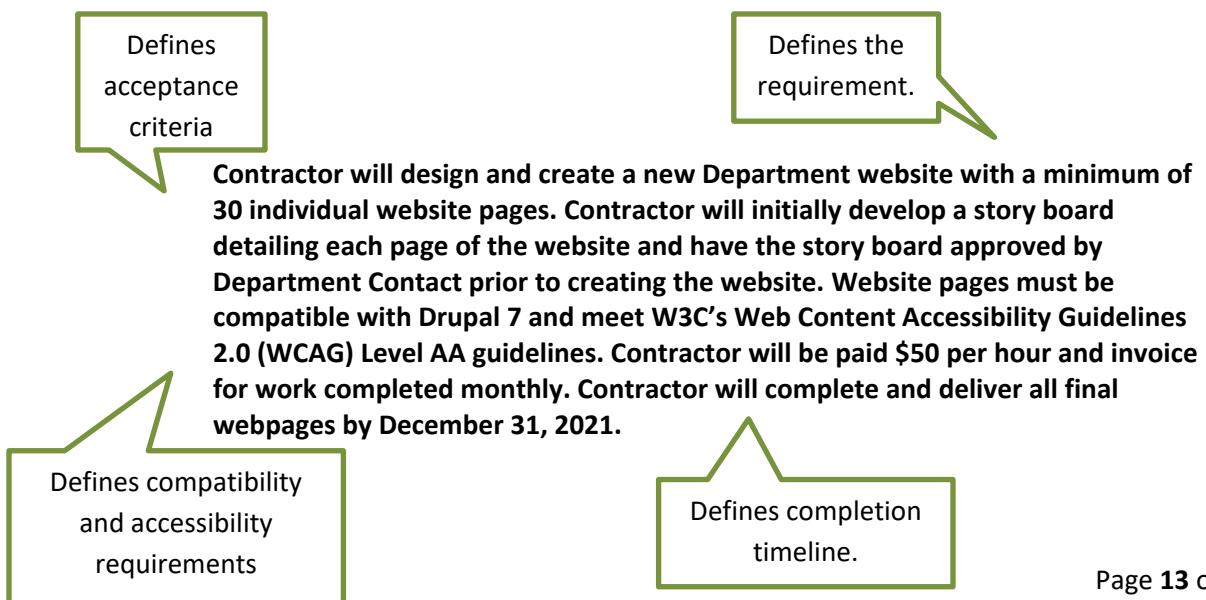
Typically, a good SOW for a PSC will include:

- Detailed description of the work to be done.
- Location of the work.
- Timetable for completion of the work.
- Description of how work will be accepted and who at OSU will accept the work.
- Details on milestones and payments related to these milestones (if any).

Here is an example of an SOW, the issues with how it is written, and how it could be improved:



To address the questions above, an improved SOW may state:



Essentially, a detailed SOW will help mitigate some of the issues involved from lack of clarity, responsibility, and outcomes, while a less detailed SOW will increase the risk but may allow for more flexibility where required. In the above example, the details are enough to provide for what the desired outcomes are without restricting how the performance is done.

A supplier's Statement of Work (SOW) or Proposal will be different than a contract in that they will typically not include or reference terms and conditions for services. If the supplier includes a SOW or Proposal that needs to be incorporated in a contract, use the PSC as the contract mechanism and include the SOW or Proposal (less the supplier's terms and conditions) as an attachment and label it as such.

Routing

Once the PSC information is completed, the department will route for signatures. The order of signatures is:

1. Contractor
2. Department Head

Do not route a DocuSign document to the PaCS email address. PCMM will not accept pictures of the PSC.

After the Contractor and Department Head have signed, the PSC and all applicable associated documentation will be submitted in BennyBuy through one of two routes:

- **Purchase Request Form** - Submitting through the Purchase Request form will route the PSC for budget approvals and encumber the funds in the associated index(es). If submitting this way, make sure to check "yes or unsure" when asked if PCMM needs to review, AND add a Comment indicating PCMM needs to sign the contract. This route will also create a Purchase Order (PO). Again, it is critical to consider the potential total cumulative dollar amount of the contract. Departments can elect not to have the PO sent to the Contractor but to the department instead since the fully executed PSC will be the contract mechanism for this procurement. In this case, the requestor will need to make sure the fully executed PSC is returned to the Contractor.
- **Contract Request Form** – Submitting through the Contract Request Form will **NOT** route the PSC for budget approvals nor encumber funds. The request will come directly to Procurement for review and final signature. Procurement will return the fully executed PSC to the requestor, who will then provide it to the Contractor.

Changes

Changes can occur to the PSC at any time during the process. If this occurs, the following are how to handle those changes at various stages.

Prior to Signatures

The department is welcome to enter into negotiations with the Contractor to work out details of the Statement of Work prior to signing. However, if there are segments of the OSU Standard Personal Services Contract Provisions, or the Contractor wants to supplement the terms and conditions, departments must coordinate this with Procurement.

For Procurement to review suggested edits to OSU Standard Personal Services Contract Provisions, the Contractor should redline and/or interlineate the PDF and return to OSU. It is essential that white-out or other methods of correction, which do not document the actual change, should NOT be used to make a change. Procurement can approve the suggested edits, recommend alternatives, or provide details on why OSU would not want to edit the terms and conditions. If the Contractor is unwilling to perform unless specific edits are made, Procurement will provide the department with an analysis of the risks. For business risks, the department may agree to those edits and acknowledge the risks before Procurement will execute the PSC.

After Department Head and/or Contractor Signatures

If minor changes are requested after the Department Head or Contractor have signed, then each party will need to initial next to the edit to acknowledge and approve the change. Major changes to the PSC need to be rewritten and rerouted for signatures.

After All Signatures

A fully executed PSC (all parties have signed) that requires changes, needs to be amended. Typical amendments to a PSC include:

- Extending the term of contract.
- Increasing the NTE amount.
- Adding services that are within the scope of the original work.

Departments should not amend a contract's NTE above \$25,000 unless the PSC was competitively solicited or given a non-competitive exception.

To amend a PSC, departments will use the PSC Amendment Form found under Forms, Purchasing Forms, and Personal Services Forms on the [Procurement Faculty and Staff webpage](#).