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## Introduction

Consultancy services by their nature require collaboration and cooperation and so it is vital for the success of any project for the parties to adopt a teaming approach to the way they work.

One of the first and most important steps for any procurement is the definition of the scope of services.

**The Client's perspective:** You will know what is best for your business including whether the scope of services will be appropriate for your needs so a clear and well defined scope of services will inform your choice of Supplier and your commercial negotiations. You are paying for the Supplier's services and may be relying on the Supplier's expertise to deliver a particular outcome so you want to clearly set-out your requirements and what services you need from a Supplier.

**The Supplier's perspective:** The scope of services is essential to accurately determine your responsibilities and deliverables, approach to delivery, and assess your risks, cost of performance and the allocation of your resourcing. A Client may be relying on your expertise but you need to understand the Client's requirements and set out what, how and when you will provide the services and ensure your price point is correct for the service.

If the scope of services is inadequate and unclear than this may result in negative outcomes for both parties, ranging from unsatisfactory performance, delays, costly contract amendments, litigation, high costs and damage to reputation. It may be appropriate to make express statements as to areas and matters that fall outside the scope of the services, including, any geographical limitations and limitations on information, and time periods and business entities that will be considered as part of the assignment.

## The 6 Key Questions

There are essentially 6 key questions for both parties to cover in the scope of services, although the exact contents will range depending on the services being procured, the complexity of the project and any number of other variables:

<b>Why?</b>	Describe reason for consultancy services
<b>What?</b>	Describe the services required
<b>Who?</b>	Describe each party's role and responsibilities
<b>How?</b>	Describe the approach and expected standards of performance
<b>When?</b>	Describe the period of performance
<b>Where?</b>	Describe where the services will be provided

### Why?

Setting out an overview of the Services provides background to the project and will describe how the services fit into the Client's objectives.

For a Client this will link back to your needs assessment of your requirements and why you are procuring consultancy services. What value do you think the Supplier will bring? Can the services be provided internally? Has there been a lack of key skills historically? Explaining why the services are needed will help inform the Supplier about what the scope of services will be, the type of approach to be taken and define the roles and responsibilities of the parties when delivering the services.

### What?

The scope of services can be broad and in general terms to allow flexibility, or they can be very detailed and tightly defined to a set specification; the type you need will invariably depend on the nature of your requirements and the complexity of the project. It will also drive the commercial model that is suitable.

For example, it is much easier for you to detail the volume and your expectations if you are looking for consultancy services to conduct surveys. However, a relatively flexible scope of services may be needed when you are looking for guidance and advisory support on defining requirements. A Supplier would expect to have much more latitude in structuring its approach and the roles and responsibilities of the parties will be driven by this.

Any assumptions that are made in defining the scope of the services and any deliverables to be provided will be specified so any misunderstandings can then be clarified and, if necessary, modifications can then be made.

Whether you are a Client or a Supplier of consultancy services, you will need to ensure that the definition of the scope of services is appropriate for your needs and both parties have a complete understanding of what is being asked for and delivered in the contract.

## Who?

As no two Clients are the same, the services a Supplier will provide will differ for each project.

**The Client's perspective:** You are paying a consultancy for their experience, capability and expertise to deliver a set of requirements and you will expect them to be responsible for this.

**The Supplier's perspective:** A Client will know what is best for its business and will be best placed to make decisions in the context of its business. A Supplier will have experience and capability to deliver various services, but will need the Client to provide the required input into the project to ensure success.

For most consultancy services, obligations would typically need to cover:

- a) Provision of information
- b) Access to relevant staff
- c) Client taking management decisions and obtaining approvals promptly
- d) Provision of administrative support and space as Suppliers are frequently working on Client site
- e) Notification of relevant developments in the Client's business that will impact delivery of the project
- f) Obtaining any necessary third party permissions, approvals and licences
- g) Activities performed by any third party

A failure to detail each party's obligations in the contract may result in disputes and misunderstanding and ultimately cause delays to the delivery of services, but the actual obligations in the contract will depend on the services provided.

For example, where a Supplier may provide Programme Management Office (PMO) services in multi-Supplier environment for a major IT project, the Supplier may be responsible for coordinating and project managing the delivery of the project and for providing regular reporting to agreed stakeholders and programme executives, but it would be appropriate for a contract to clarify that the Client is responsible for ensuring that their other Suppliers provide information, materials or other assistance in support of the PMO Supplier. It would also benefit both parties to have clarity in the contract that the Client remains responsible for the management of its other Suppliers so the Supplier's role and responsibilities cannot be misconstrued.

Both parties should give due consideration to the obligations needed in the contract given the context of the services.

## How?

Both parties should have a clear understanding of expected levels of performance, expected outcome and any specifications or standards which should be met.

**The Client's perspective:** You will expect that any services provided satisfy any the requirements you have set out and agreed with the Supplier. You are paying the Supplier to deliver services to your satisfaction and are relying on the Supplier to deliver this.

**The Supplier's perspective:** Service standards and levels of performance have separate, albeit complimentary, roles to play in the drive for service excellence. A Supplier will expect to deliver the services against an objective standard such as "with reasonable skill and care" (as defined in the Supply and Sale of Goods Act) and with the skill expected by an organisation of its size and experience in its industry, and will price its services with these principles in mind. Absolute standards of performance which are subjective terms such as "highest" and "best" will increase the Supplier's risk profile and time input and this may be reflected in the Supplier's pricing.

Open-ended and subjective performance requirements and standards such as "as directed by the Client," "satisfactory to," and "subject to approval," will not give either party certainty that the services or any outputs have been delivered. By having a clear approval process and acceptance criteria will benefit both parties as it allows final closure.

Standards can take the form of specifications, guidelines, methodologies for particular tasks, to terms and definitions. The standards you need are entirely linked to the services provided.

Both parties should invest the time to ensure that the expected levels of performance and any specifications or standards are suitable in the context of the services and consider these in your commercial negotiations.

## When?

Both the Client and Supplier need to clearly understand the timing for the performance of the services whilst also recognising that delivering a project will have dependencies and is ultimately a joint endeavour.

The type of services provided may mean that it is not possible to understand what the timetable for the delivery of services is until the services have commenced, and so in discussions and scoping of the services, dates will be provided for planning and estimating purposes only and will be refined in project initiation documents or progress meetings.

For a Client, the circumstances at the time of procurement may have changed in the course of tendering which may mean there is a slight change in their requirements. Likewise, for a Supplier a proposed resourcing requirement may need to change if personnel resign or because the project kick-off is delayed, raising a need for either additional resourcing or extended delivery dates.

On occasion a Client may have fixed milestones and very specific timing requirements. Commercial models that support these have been discussed above.

“Time is of the essence” is a phrase that is well known and familiar, something which you may use in general conversation. The phrase itself appears to be self-explanatory. However, it is not something to be used lightly when used as a legal term within a contract. It can be of high importance and have major consequences so all parties need to understand and be fully aware of it.

When used, it signifies that any references to times and dates are critical and vital to the performance of the contract and any delays in performance could result in an immediate termination or a claim for damages, without any regard to the materiality of the breach or the harm caused.

### **The Client’s Perspective**

As a Client, you are paying for additional capability and resourcing to deliver set requirements. Where you have fixed milestones or critical dates, for example where a major applications software project is part of a much larger IT project and late delivery could delay the development of the remainder of the IT project, then you will want to ensure that the Supplier meets these dates.

However, are all the dates in the contract critical dates? Is it just the go-live date which is vital or a fixed deadline for a report? Is it really your intention to terminate the contract if a meeting starts 5 minutes late? Will this cause material harm to your company or the delivery of the project?

### **The Supplier’s Perspective**

“Time of the essence” may reduce your options for a Supplier, preclude innovation or make pricing uncompetitive as the Supplier will seek to mitigate their risks. The key thing is control – if the supplier has total control they can deliver against ‘time is of the essence’, though this is rarely the case.. The Supplier would expect exceptions where there are assumptions being invoked and Client responsibilities not being met.

It will invariably influence your pricing, approach and resourcing considerations, particularly if there is uncertainty in the scope or roles and responsibilities of the parties. There will be very little flexibility, and scope will need to be managed very carefully.

Whether “time of the essence” is appropriate in a services contract is arguable. There are many factors and variables which may impact the delivery of services and there are more practical mechanisms that the Client can use both from the perspective of incentivising the Supplier as well as from the perspective of how the parties work together that probably better achieve the end aim which is to get the project delivered on time.

## Where?

The location for the provision of services may impact commercial negotiations.

Is there an expectation to work on the Client's site, and if so:

- What equipment will be provided?
- What access is needed?
  - Do you need to organise security passes?
  - Do you need a Client email address?
  - Do you need access to the Client's network?

If you have a global scope of services, is there an expectation for travel to multiple Client sites?