

Australian Medical Association Limited

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DVA - Contract Medical Advisers

The Department of Veterans' Affairs (DVA) engages a number of doctors as contract medical advisers. They work in DVA offices and interact with DVA staff and processes on a daily basis, but they are engaged as contractors, not employees. DVA has reviewed its arrangements for health advisers (includes medical, dental and allied health professionals) and has gone to tender for new contracts. The AMA has pressed DVA for consultations on the matter and provides the following material for the information of members who currently work for DVA on a contract basis or are contemplating doing so.

At the beginning of 2004 the AMA took up with DVA the dissatisfaction expressed by members with remuneration and that contracts had not been brought up to date. The AMA wrote to DVA suggesting an appropriate fee adjustment and subsequently met with them on a number of occasions about contract medical advisers. DVA advised that they had been waiting on the outcome of an Australian Taxation Office (ATO) ruling on payment of superannuation in relation to contract health advisers.

The AMA met again with DVA in November 2004 and DVA undertook in writing to consult with the AMA as soon as the ATO decision was known. Despite this undertaking, DVA wrote to contract medical advisers on 24 December 2004 advising that contract issues had been resolved and that the Department was moving forward with new contracting arrangements.

After further representations, DVA officers met with the AMA on 15 March 2005 to explain new contracting arrangements. DVA advised that they were going to tender for an entirely new set of contracts to meet their assessed needs. The background was a projected decline in veteran numbers and a need for DVA to manage a correspondingly reduced workforce.

DVA will no longer engage individuals as contract medical advisers, only incorporated bodies. They will only deal with corporate "entities" rather than individuals.

DVA expect that contract medical advisers will have more of a distinctly clinical role with less "administration", although what this means in reality is not clear. On one possible view, a knowledge of DVA legislation, systems, policies, guidelines etc would be useful, if not essential, for a medical adviser to be effective in the job. Perhaps this will be a factor in selection of contractors.

Remuneration will be fixed at the rates determined by DVA - \$88.38 per hour for medical advisers and \$96.66 for senior medical advisers. There will be no negotiation over these rates and there will be no annual review of rates - they will be adjusted only by a wage cost index produced by government.

DVA has prepared a standard Services Agreement. Tenderers are afforded the opportunity to indicate those parts of the agreement they do not accept and provide alternative wordings or proposals.

At the AMA's request, DVA provided a copy of the proposed standard Services Agreement. The AMA made a number of comments to DVA that set out our concerns regarding the draft agreement – with the unresolved concerns being set out below.

Aside from a few relatively minor changes, DVA decided to leave the agreement largely unchanged. It will be interesting to see if this approach is reflected in tender negotiations and whether the process becomes a take or leave it scenario.

The comments provided by AMA to DVA are detailed below (the clause numbers referred to are those in the standard contract template) and provided in order to provide members with a detailed outline of the AMA's concerns:

Services Agreement

The Schedule

Part B (3): This type of clause, whilst providing maximum flexibility for both parties, provides minimal contractual security. It would be preferable to have defined reasons for cancellation. This improves security and removes the potential for unfair conduct and retributive behaviour.

Part B (4): Compensation should be incorporated if the contract is cancelled outside the terms contained in a revised Part B (3) or clause 22.

Parts J-M contain no information and obviously need fleshing out.

The Clauses

- 1.3 Add: "DVA will provide sufficient time and resources to permit the handover to occur".
- 1.5 At what point does survival end, or is it in perpetuity?
- 2.2 This can be used to effectively terminate the contract without reason, without notice, circumventing Part B (3) where the contractor simply cannot provide an alternative. For example, if the person removed has a specialized skill set, it may not be possible to replace them.
- 5.1 'Absolute discretion' lacks any kind of appropriate administrative process. This is akin to clause 2.2, it provides an open clause to terminate the contract.
- 6.2 Given that the contractor would be reliant upon an ISP, the contractor can only warrant they will enable full and non-disruptive connectivity as defined under some sort of industry accepted standard. For example, the contractor will utilize an ISP who has performance statistics that indicate better or equal to XYZ down time per year or something similar. You can't warrant something you have no control over.
- 7.2(b) If DVA is requiring the contractor to incur a cost not previously notified prior to the commencement of the contract, the payment of these additional costs should not be at DVA's discretion, especially if prior approval is required.
- 7.2(c) Change 30 days to 14 days (for DVA to make payments).

- 7.9 Delays in payment by DVA should attract interest.
- 10.1 This clause (Complaint Handling) is wholly one-sided and should be expanded to incorporate complaints made against DVA. Neutral assessment mechanisms should be employed, neither party should be given carte-blanche to 'manage' the complaint.
- 11.2 Why is arbitration not an acceptable option, and who is making the determination?
- 13.5 This subclause results in the contractor providing unlimited coverage, where the 'other party' breaches the Privacy clause. Who is the 'other party', DVA? If so why is the contractor indemnifying the Commonwealth for its actions?
- 15.4 (Managing a conflict of interest) Omit and redraft to something reasonable.
- 19.1 Why is the contractor protecting DVA's interests?
- 19.3 (Professional indemnity cover) Why 6 years?
- 21.1 Simply because the Commonwealth has a change in policy should not immediately disadvantage the contractor. Ninety days notice in respect of cancellation or substantial reduction in scope should be inserted.
- 22.6 (Costs of procuring services from another supplier) Amend to "...under Clause 22.4, except in relation to clauses 5.1, 21.1".
- 24.2(c) This clause should be removed and exact terms covering what the contractor is being contracted to do, when, where, for how long, etc. As it stands you may be contracted to provide services and not actually be required to provide any. It's akin to being on a retainer without any fee being paid, or being on-call with no on-call allowance.

The AMA's position is that contracts are a two way street between parties of roughly equal standing. If one party refuses to negotiate on any part of a proposed contract and seeks to impose its will on the other party, the contractor should very carefully examine the risks and costs they may be exposing themselves to in both the short and long term, as they may make the contract less attractive than at first glance.

Doctors are advised to obtain specialist advice in the preparation of tenders and legal advice in the execution of contracts with DVA. AMA members who have general questions about the DVA tendering process and contracts are invited to contact their State AMA for assistance.

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