

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 23 May 2006

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

(258) Output 2.1: Settlement Services

Senator Hurley (L&C 16) asked:

Provide a copy of the contract that deals with underperformance, breaches and penalties.

Answer:

A copy of the contract clauses that deal with underperformance, breaches and penalties is attached.

IHSS CONTRACT CLAUSES DEALING WITH UNDERPERFORMANCE

19.3 Verification & Withholding of Payment

- a) Prior to payment being made, DIMIA's Contract Manager will verify the correctness of the invoice and confirm that the Services provided by the Service Providers against which payment is sought, have been delivered in accordance with this Agreement and any relevant Official Order(s).
- b) DIMIA will be entitled, in addition to any other right it may have, to delay payment of any instalment of fees or allowances until the Service Providers have completed to the reasonable satisfaction of DIMIA that part of the Services to which the payment relates.
- c) If DIMIA has already made a payment to the Lead Agency, and the Service Providers fail to deliver any part of the Services to which that payment relates, DIMIA may withhold any further payments in whole or in part until all outstanding Services are completed to the satisfaction of DIMIA.

31. Underperformance and Breaches

31.1 Dealing with Underperformance and Breaches

- a) Where an Annual Report identifies, or DIMIA otherwise becomes aware of, any deficiencies in the delivery of Services by the Service Providers, including a failure by the Service Providers to meet the required standards of performance against a Key Performance Indicator, then DIMIA may require the Service Providers to develop and implement a strategy to rectify the deficiencies or the underperformance within a timeframe specified by DIMIA.
- b) If the Service Providers fail to implement the strategy to rectify identified performance deficiencies or underperformance within the specified time frame, the Parties agree that such a failure constitutes a material default by the Service Providers for which DIMIA may give notice to the Service Providers under clause 0.
- c) Paragraph (b) applies except where such a failure is due to a cause beyond the reasonable control of the Service Providers, other than a cause arising out of any act or omission on the part of the Service Providers or their Personnel.

31.2 Excusable Delay

- a) Subject to this clause 31, DIMIA will not exercise its rights or remedies under this Agreement on the default or delay of the Service Providers if that default or delay is caused by any act, omission or event beyond the reasonable control of the Service Providers, the lead agency must:
1. immediately notify DIMIA in writing when it considers any event or circumstance may cause a delay and the estimated period of delay;
 2. give details of the likely effect on the Services and any contractual implications;
 3. take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;
 4. request in writing an extension of time which the Lead Agency considers reasonable in all the circumstances; and
 5. use its best endeavours to ensure the Service providers continue to perform their obligations under this Agreement.
- b) DIMIA will give consideration to the Lead Agency's recommendations and any request for an extension of time and as soon as practicable after receiving the request notify the Lead Agency in writing whether it has accepted the Lead Agency's claim and whether all or part of the request has been granted. DIMIA's approval of a request may be granted subject to conditions.
- c) Where DIMIA agrees to accept the Service Providers' delay or default was beyond their reasonable control, then, subject to clause 5:
1. DIMIA and the Lead Agency will agree on how to resolve the delay or default;
 2. DIMIA and the Lead Agency will agree on any variation to the fees to take account of the delay or default; and
 3. DIMIA will agree to an extension of time to take account of the delay or default.
- d) The Lead Agency is responsible for dealing with the Service Providers on any issue arising under this clause 31 and ensuring that the Service Providers comply with any agreed resolution to the issues.

- e) Where DIMIA determines that the Service Providers' inability to perform their obligations due to an act, omission or event which is likely to exceed 30 days, DIMIA may:
1. notify the Lead Agency that the relevant Service Provider is suspended for a specified period of time; or
 2. delete part of the Services; or
 3. immediately or thereafter terminate the Agreement in whole or in part by providing notice in writing to the **Lead Agency**.

32. Termination for Default

- a) Where the Service Providers fail to satisfy any of its material obligations under this Agreement, the Commonwealth may, if the failure is:
1. not capable of remedy, terminate this Agreement immediately by notice in writing to the Lead Agency; or
 2. capable of remedy, by reasonable notice in writing to the Lead Agency, require that the failure be remedied within a reasonable time as specified in the notice and, if the failure is not remedied within that time, may terminate this Agreement immediately by giving a second notice in writing to the Lead Agency.
- b) If any of the Service Providers become bankrupt or insolvent or become subject to any form of administration, then the Commonwealth may, in addition to any other right or remedy it may have, by notice in writing to the Lead Agency terminate this Agreement or reduce the scope of this Agreement.
- c) The Commonwealth will not exercise its right under clause 0 or 0 without:
1. first consulting the Lead Agency about possible remedies, including the possibility of engaging alternative service providers; and
 2. agreeing on a strategy for remedying any default.