



Navigating Successful PFI Expiry & Handback

HOW TO PREP FOR CONTRACT EXPIRY AND HANDBACK

There's a plethora of things to consider as a P3 contract nears its end. So, follow this how-to guide by the experts at Inveisit to help navigate your way

As any P3 contract approaches its expiry or, perhaps more appropriately, prepares for the delivery of critical services beyond the expiry date, the breadth of factors to be considered and resolved is vast:

- **Behaviours and attitudes of the parties and their representatives.** Granted, it's a complex and significant task, but assuming the scope, process and programme can be well considered and a handback plan agreed, the execution of this plan is far more likely to be a success where the parties display positive behaviours, including being open, honest and respectful.

- **A collaborative approach.** At the outset, the obvious starting point for the handback process will be the provisions set out in the Project Agreement. Yet, before that it is key all parties involved in the project collectively and individually identify their desired outcomes and agree common goals. These should include recognition of each party's position, the allocation of risk, the remaining concession period and service provision after expiry. The parties should also agree their approach to the handback process,

with a collaborative approach most likely to underpin a successful process.

- **Flexibility regarding handback provisions.** The handback process, to some extent, will be set out in provisions in the Project Agreement. Yet, often these provisions are less developed than is necessary and it is commonplace that the project parties take a flexible approach to develop a more appropriate process. This flexibility should not be confused with an opportunity to renegotiate contractual positions, unless mutually agreed. A great example is early engagement. It is critical this process and an associated programme are agreed and implemented at an appropriate juncture, potentially five to seven years before expiry. In our experience, this results in a significant improvement in the project handback.

What are the key ingredients to delivering a successful handback?

- **Definition of O&M requirements beyond handback.** To achieve a successful handback it is essential to identifying the users' operational requirements after expiry.

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N31 Dual Carriageway, the Netherlands – handed back in 2022



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This requires the procuring authority and users to carefully consider their future operational requirements and identify how the project assets fit into this, before then factoring this into the handback process. To provide a framework for this long-term planning it is important that relevant policy and funding decisions are taken early and cover the same period as the operational assessment.

- **Identify a dedicated team to establish and lead the handback process.** Critical to the success of any handback process is

the resources and competencies required to execute the agreed process. When you consider the process may include the transfer of physical assets, people, knowledge/data, warranties/guarantees, and supply chain support within what will inevitably be a legal and commercial context, it is easy to see that the handback process will require resources and competencies similar to those employed when contract close was agreed. Once the process and programme have been established, parties will be able to assess the resources and competencies they require.

- **Clear procedures and a joint inspection process.** Successful handback processes clearly define the roles and responsibilities of the inspection procedure. This includes establishing the timing of inspections, benchmarks for asset quality, and procedures for incorporating inspection findings into maintenance plans. Inspections should be conducted jointly to ensure a transparent and common understanding of the results.
- **Be mindful of changing requirements.** Another consideration is the identification and inclusion of any initiatives which

promote new policies or are critical to future operations, which can be supported in the remaining years of the concession. For example, this could include re-purposing of the assets and services or a carbon-reduction plan. Where these initiatives are identified the remaining period of the concession provides an opportunity to implement these through the project change provisions, or the intelligent use of maintenance/lifecycle budgets. Some would argue that these initiatives can be implemented more easily after expiry; yet, this ignores the opportunity cost.

- **Financial incentives and protection mechanisms are beneficial.** By defining maintenance benchmarks supported by maintenance reserves, letters of credit, or surety bonds the public agency is protected financially should the asset require additional capital investment or repairs.
- **Residual life calculation.** Bearing in mind the assets involved in any P3 project will have a design life well in excess of the project concession period, it is essential to the project's long-term success that during the handback period a plan is developed to secure the residual value in the assets through an appropriate maintenance and lifecycle strategy.

Where are issues likely to arise and how can they be resolved?

It's easy to imagine a raft of potential issues arising during the handback process. For instance, where there is a degree of subjectivity, competing commercial positions, or where the handback plan itself starts to fail.

In the context of a complex handback process, with a specific deadline, it is likely that the parties would prefer to resolve such issues quickly and amicably. To do so will require the positive attitude and behaviours from all parties and this would be assisted by:

- A willingness to engage on issues as they arise, and to compromise.
- The publication of evolving guidance on issues encountered during handback.
- The creation of a code of practice with voluntary commitment.

- The sharing of DRP decisions.
- Jointly commissioned legal position papers.

As a last resort the DRP provisions can be used, and this may be appropriate, but it may be more cost-effective and quicker to reach a resolution by other means.

Another conflict area may be workforce transition. The transition of any employees from the concessionaire to a new operator should not be overlooked. The public agency needs to capture and consolidate private sector knowledge for successful handback and manage the transition to a new operator. A successful handback secures continuity in operations by integrating existing employees into the new operator's workforce, while at the same time maintaining operations and service quality of the asset for users.

How can contracts be improved so conflict can be avoided?

At this point the main shortcoming of contracts is that the handback provisions are generally less developed than is necessary. To rectify this, further detail or contractual provisions should be added, including:

- Clarification of an agreed process.
- Timing of key activities.
- Clarification of asset condition upon handback.
- Residual life expectations.
- Deliverables.
- Retention/reserve accounts.
- Flexibility to amend the contractual handback process, recognising that handback requirements and expectations will evolve over time.

This detail could be added at the agreement of new P3 deal, preferably through standard form drafting and either added to existing contracts through formal agreement or recommended through the issue of guidance.

How can partners ensure buy-in from all stakeholders to prepare for handback several years before the contract is due to expire?

Early engagement should be the means to ensure timely buy-in from the project stakeholders and through this it should be clear to all that a strategic and early approach



Peacehaven Schools, preparations well underway for handback in 2026

best serves their interests. This engagement should also include senior management from all the stakeholders to ensure the criticality of handback is appreciated and that the commitment to engage can be reinforced. A handback plan should then be developed and monitored, with any lack of engagement or programme slippage addressed.

Short-term issues can distract stakeholders from handback. Where this is the case careful consideration should be given to mitigate or negate this through, for example, allocation of additional resources to create separate teams (one continuing the day-to-day running of the project and another concerning itself with handback), or by prioritising matters based on their overall risk to the procuring authority.

The sharing of experiences throughout the market, including successes and challenges, should be encouraged to avoid an adversarial approach and promote the desired win-win outcome. ■



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