

# Contract Expiry and Asset Handover

## Full Description

The final task in managing a PPP contract is to manage the transition of assets and operations at the end of the contract term. The approach to this transition should be clearly defined in the contract. As set out in [Designing PPP Contracts](#), this typically includes defining how quality of the assets will be defined and assessed, whether a payment will be made on asset handover, and how the amount of any payment will be determined. Options include clearly specified handover requirements, or the involvement of independent assessors.

A principle of a PPP contract is to achieve value for money during its whole life. Whole-life value for money includes achieving the contracted handback criteria, which must be managed in a timely and robust manner. Contract management teams must be aware of the expected contract handback conditions and ensure that preparation works, maintenance and asset management has been completed and any post-contract conditions will be met.

As noted in **The World Bank's Toolkit for PPPs in Roads and Highways** section on handover of facilities at contract end ([WB 2009a](#), Module 5, Stage 5), there has been relatively limited practical experience in completion of PPP agreements. Equally, there is limited practical guidance on dealing with this stage of contract management.

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A contract can be terminated regularly, that is, at the end of the agreed concession period, or it can also be terminated prematurely (either by the public agency or the concessionaire) in the case of serious, pre-defined events, for instance:

- Extended *Force Majeure*
- Concessionaire default
- Insolvency or bankruptcy of the concessionaire
- A serious deficiency in service provision (e.g. where health or safety is jeopardized) that is not promptly remedied
- Voluntary termination by the contracting authority

[Termination Provisions](#) discusses the several types of early termination and corresponding contractual provisions. This possibility of early termination implies that, from inception, the contract manager needs to have a plan for termination.

## Regular Termination

The most important element of termination is handing over project assets and services back to the contracting authority at the end of the PPP contract period. Transferring assets to the public agency requires a thorough assessment of the quality of the assets at handover. Typically, the PPP contract will include quality standards that the assets and facilities are required to meet at the end of the contract period.

An audit will assess the state of the assets several years before the termination date. The audit indicates which assets need to be improved before handover can occur. This procedure is particularly relevant because the project will represent an asset for the contracting authority after the expiration of the PPP contract. As such, the contracting authority should have a financial incentive to ensure the asset is returned in the best condition possible.

Sometimes the concessionaire is required to issue a specific bond or guarantee to cover the last few years of the contract period. The bond should have a minimum value that ensures the concessionaire has sufficient financial incentive to continue the contract until the contracted end date and hand over the assets at the defined quality.

## **Early Termination**

The PPP contract must include clear procedures and provisions for early termination of the project. The contract should describe in detail the specified circumstances that allow the contracting authority to terminate the contract. It should also include possible compensation—to both parties. A breach of contract must be fundamental in nature and should (where possible) be subject to a cure period.

Usually (but not necessarily) there is a payment from the public authority to the concessionaire. This payment, or compensation from the concessionaire to the procuring authority, should be based on rules clearly stated in the PPP contract.

Early termination is a serious event as the contracting authority might suddenly be required to take over implementation or operation of the service. As early termination might also influence future PPP projects negatively, this should be the last resort—poor performance and poor communication among partners should be carefully addressed by the contract manager to avoid, if possible, degenerating into early termination.

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