Browne Jacobson

PFI expiry - hope for the best, plan for the worst?

26 October 2023 Craig Elder

There are hundreds of educational institutions across the UK operated under a Private Finance Initiative (PFI). Over the next five to ten years, they will come to an end. Many PFI customers will warmly welcome this, and new-found freedoms to operate on the open market for the services they need. But is there a final sting in the tail?

What does the contract say?

PFI contracts are, as anyone who has had to pick one up will testify, lengthy and complicated. More recent versions were, at least, subject to some form of standardisation and more helpful to the public sector customer than the earlier iterations. But they nevertheless vary hugely and contain a range of expiry, asset-survey and hand-back provisions.

Knowing its rights and obligations under these contracts is the PFI operator's day job. This may not be the case for the public sector customer, so your first job is to get up to speed on what the PFI does, and does not, say about expiry. There are huge financial and opportunity costs arising from inadequate hand-back of a facility, so the importance of this cannot be overstated.

PFI doesn't end for a year, surely it's not urgent?

The UK Government recommends that planning for PFI expiry starts seven years in advance. Even on the assumption that this is a slightly conservative estimate, public sector customers should be looking in detail at a PFI exit strategy five+ years before planned expiry.

This should involve not only consideration of the PFI terms, important as they are, but your future plans for the assets and replacement of the services. There is little point holding an operator to hand back and upgraded block based on the requirements and curriculum from year 2000, if the next twenty years is going to hold very different challenges best served by investing differently.

What about partnering?

Back in the glory days of PFI, when a long pipeline of projects snaking into the future, PFI operators were keen to talk the language of partnership and, if an active PFI market remained (the scheme was finally ended in 2018), the need to retain a strong reputation in that market might have continued. But the incentives on operators who are exiting the market is to close their deals with as little cost and risk as possible.

It may therefore take active management, and professional and technical support, to hold the operators to their deals.

But there might be opportunities for "win wins". PFIs currently expiring were procured in a very different world, long before heat pumps and net zero were common currency. It may be that an operator is obliged to undertake some form of lifecycle maintenance in the final years of the contract when, in fact, that investment might be better directed to improved insultation rather than, say, a new gas boiler.

So, armed with an understanding of the terms of the PFI, the incentives on the operator, and the customers' own future requirements, there might be an opportunity to end the relationship in a spirit of partnership after all.

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