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# **PPP legal and regulatory framework - UK**

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# Regulatory framework

- No PPP law!
- EU Procurement regulations
  - Treaty of Rome principles:
    - » equal treatment
    - » Non-discrimination
    - » Transparency
  - OJEU
  - Classical Directive and Utilities Directive
  - → Public Contract Regulations 2006
  - Other applicable laws and regulations e.g. to cover competition, State Aids

# Wider policies

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- Managing Public Money
- HM Treasury and OGC ‘Guidance’ eg:
  - Value for Money
  - Refinancing
  - Contract management

# Procurement procedures

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- Open procedure
  - no prequalification, no negotiation
  - not suitable to PPP
- Restricted procedure
  - pre-qualification, negotiation
  - some EU states use for PPP
- Competitive Negotiated procedure
  - pre-qualification, ITN, no formal end to negotiation phase
  - used extensively in UK PFI before Competitive Dialogue

# Procurement procedures: competitive dialogue

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- Process:
  - Pre-qualification,
  - Invitation to participate in dialogue,
  - Formal closure,
  - Invitation for final tenders
- Complexity requirement
- Main procedure for UK PFI

# Standardisation

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- Need for a strong sponsor and regulatory platform
- Recommended /required drafting: exegetic
- Enforcement regime
- Roll out policy
- Optimise balance of risk transfer
- Improve quality of contracts
- Achieve consistency
- Reduce negotiation time/cost
- Reduce procurement time

# Principles of a “standard” PFI project

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1. Authority transfers responsibility and risk for asset/service to Contractor
2. Contractor takes on obligations for c.20-30 years
3. Contractor builds, manages, maintains asset and provides service
4. Lenders fund Contractor on limited recourse basis
5. Authority pays “Unitary Charge” for available/acceptable service (e.g. social sectors)
6. Some demand risk transfer in some sectors (e.g. transport)
7. The PFI Contract (and associated documents) must regulate a network of relationships

# Key terms of Standard Contract

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- Step-in rights
- Authority should not generally control sub-contractors
- Change of ownership
- Categories of events where fair to relieve Contractor of liability to commence/provide Service:
  - Compensation Events
    - time and money
  - Relief Events
    - relief from termination
  - Force Majeure Events
    - termination after a limited period (e.g. 6 months)

# Key terms of Standard Contract cont.

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- Termination
  - Authority Default (Breach)
  - Authority Voluntary Termination
  - Contractor Default (Breach)
  - Force Majeure
  - Corrupt Gifts and Fraud
  - Breach of Refinancing Provisions
- Change in service
- Refinancing