

**AMERICAN BAR ASSOCIATION
SECTION OF PUBLIC CONTRACT LAW**

REPORT TO HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association urges all parties to any public acquisition at the federal, state, local, and territorial level to adhere to the following principle regarding risk allocation in formation of public procurements:

In drafting public procurement contracts the parties should, to the maximum extent practicable, (i) clearly identify the risks of performance for both parties, and (ii) allocate those risks and the values exchanged in a commercially reasonable manner, consistent with the broader obligations of parties to public contracts.

FURTHER RESOLVED, that the American Bar Association supports federal, state, local and territorial legislation and regulations to implement this principle.

Adopted by the American Bar Association House of Delegates in August 1999.