

**AMERICAN BAR ASSOCIATION
SECTION OF PUBLIC CONTRACT LAW
SECTION OF STATE AND LOCAL GOVERNMENT 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 principles regarding the resolution of controversies and the availability of remedies at all stages of the process including formation, performance, and enforcement, and that the American Bar Association supports federal, state, local and territorial legislation and regulations to implement these principles:

Principles for Resolving Controversies in Public Procurements

1. Parties have an obligation to act fairly and in good faith to resolve controversies and exercise available remedies.
2. The contracting process should be sufficiently open and well-articulated so as to permit review of both the process and the reasonableness of decisions.
3. The parties have a responsibility to seek resolution of controversies informally by mutual agreement.
4. The parties should attempt to resolve public procurement controversies, at any appropriate time, through the use of an alternative dispute resolution (ADR) process, by which differences may be resolved and doubtful questions settled according to such lawful terms as the parties may establish.
5. The parties must have available adequate administrative and judicial processes and remedies that provide for the independent, impartial, efficient, and just resolution of controversies.
6. To provide an adequate remedy for all parties, a government entering into a contract waives sovereign immunity with regard to controversies arising under or related to such a contract, except in extraordinary circumstances.

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