# 4. [EQUITABLE RISK ALLOCATION (RS210-1)](https://www.construction-institute.org/equitable-risk-allocation)

**Report Summary:** The research team developed the “Two-Party Risk Assessment and Allocation Model” that encourages contracting parties to compromise during the risk allocation process. It is designed to assess and allocate risk before project execution so that risk management efforts are minimized.

The model is important because it facilitates involvement from any two contracting parties early in a project and helps in appropriately allocating each particular risk to the party that is best equipped to handle it.

**Key Takeaways:**

## (1) The Equitable Risk Allocation model doubles as a risk learning tool.

## (Project Phase: Feasibility through Construction)

* Implement training sessions using the Equitable Risk Allocation model to educate project teams about risk allocation from both the business and legal perspectives​.
* Use the model's worksheets to identify and evaluate project-specific risks collaboratively between parties​.
* Apply decision trees to guide the parties in making informed risk allocation choices based on individual project conditions​.
* Conduct internal alignment exercises within each party to prepare for two-party risk assessment and cooperative discussions.
* Utilize contract language tables and legal research to address identified ‘hot-button’ risks to ensure balanced and enforceable agreements​.

## (2) Facilitate internal and external risk alignment.

## (Project Phase: Feasibility through Operate Facility)

* Conduct internal risk assessments using the single-party worksheet to ensure alignment on risk allocation goals before engaging in external negotiations.
* Establish a collaborative risk identification session to capture project-specific risks and prevent oversights prior to making two-party assessments.
* Utilize the two-party worksheet to compare internal risk ratings, identify discrepancies, and align risk priorities between the contracting entities​.
* Engage legal and contracting experts to review critical risks that have high rating disagreements for optimal allocation and fair contract terms​.
* Monitor and adjust risk strategies through iterative feedback obtained from the two-party assessments to enhance alignment continuously throughout the project’s lifecycle​.

## (3) Facilitate a cooperative two-party process.

## (Project Phase: Feasibility through Commissioning and Start-Up)

* Utilize the two-party risk assessment worksheet to help identify common high-concern risks and to ensure mutual understanding.
* Address risk-related disagreements by collaboratively analyzing rating discrepancies to establish aligned action plans.
* Engage in decision tree analysis to guide cooperative decision-making and to explore options such as insurance or shared responsibility​​.
* Refer to the legal research and contract language tools to clarify and allocate high-stakes risks fairly​​.
* Conduct follow-up discussions post-assessment to verify mutual agreement on risk handling, and monitor adjustments as needed​.

## (4) Promote a logical decision-making process.

## (Project Phase: Feasibility through Operate Facility)

* Use decision trees to guide each party through logical risk allocation steps, balancing factors such as insurability and potential financial impacts.
* Document and assess each risk's likelihood and impact to ensure transparent, data-driven allocation.
* Apply contract language tables and legal research to handle complex risk scenarios based on industry standards​​.
* Review risk ratings and discrepancies collaboratively to identify high-priority risks that require in-depth analysis​​.
* Regularly revisit and adjust risk strategies based on real-time project data to improve future risk decisions​​.

## (5) Transcend and assist multiple construction phases.

## (Project Phase: Feasibility through Operate Facility)

* Apply the risk assessment worksheets consistently across all project phases to ensure continuity and informed decision-making.
* Review and adjust risk allocation at each phase, from the Request for Proposal stage to post-award, to accommodate evolving project goals.
* Conduct bid-phase risk assessments to align potential contractors with the project’s risk tolerance and priorities​​.
* Implement risk monitoring during the execution phase to update assessments with real-time data for effective risk mitigation​​.
* Utilize feedback loops after each phase to refine the risk management practices for future projects​​.

## (6) Identify 107 risks.

## (Project Phase: Feasibility through Operate Facility)

* Review the comprehensive list of 107 risks in the model as a baseline to ensure that no major construction risks are overlooked during the planning phase.
* Categorize the identified risks across the project’s lifecycle phases, such as planning, execution, and operations, for targeted risk management.
* Include additional project-specific risks at the start to capture unique threats or liabilities that may not be included in the baseline list​.
* Utilize the risk assessment worksheets to systematically evaluate each risk's likelihood, impact, and allocation suitability​​.
* Regularly update the risk list throughout the project’s lifecycle to ensure adaptive and relevant risk management​​.

## (7) Eliminate adversarial contracting.

## (Project Phase: Feasibility through Commissioning and Start-Up)

* Encourage collaborative contract reviews to identify and address any inequitable risk allocation from the start.
* Avoid unilateral risk-shifting clauses to promote balanced risk-bearing, thereby reducing adversarial contract dynamics​.
* Include measurable acceptance criteria to minimize disputes over contract performance and to avoid subjective interpretations​.
* Establish mutual indemnity clauses that fairly distribute responsibility for damages, thereby supporting cooperative risk management​​​.
* Define delay-related risk and compensation transparently to foster fair accountability for project delays​​.

## (8) Save overall project money.

## (Project Phase: Feasibility through Turnover)

* Allocate risks to the party that is most equipped to manage them in order to minimize costly disputes and ensure financial stability.
* Avoid transferring excessive risks to lower-tier contractors to prevent inflated bids, thereby ensuring realistic project costs​​.
* Regularly review and adjust risk allocations to adapt to project changes, thereby reducing unforeseen financial impacts​.
* Implement risk assessment worksheets to preemptively identify high-cost risks and align them with capable parties​​​.
* Foster collaborative risk management to mitigate the potential costs associated with adversarial contractual relationships​​.

## [(9) Tool: Equitable Risk Allocation: Risk Assessment Worksheets Tutorial](https://www.construction-institute.org/equitable-risk-allocation-risk-assessment-worksheets-tutorial)

## (Project Phase: Feasibility through Construction)

This tool is designed to:

* Encourage risk sharing: Promotes cooperative risk allocation to prevent financial strain across all parties in construction projects.
* Encourage usage of the risk assessment worksheets: Guides contracting parties through single-party and two-party worksheets to align risk allocation both internally and externally​​.
* Identify common risks: Addresses 14 hot-button risks that often lead to disputes if not allocated appropriately​.
* Support systematic decision-making: Implements decision trees and principles for structured, fair risk distribution throughout the project phases​​​.
* Minimize financial impact: Allocates risks to the party best positioned to manage them, with the aim to reduce financial and operational disruptions​​​.

## [(10) Tool: Equitable Risk Allocation: A Legal Perspective](https://www.construction-institute.org/equitable-risk-allocation-a-legal-perspective)

## (Project Phase: Feasibility through Construction)

This tool is designed to:

* Highlight risk assessment: Encourages collaborative risk allocation early in projects to avoid costs associated with inappropriate allocation.
* Identify key risks: Focuses on 14 common hot-button risks, such as ‘No Damages for Delay’ and ‘Consequential Damages’, to streamline contract negotiations.
* Provide contract language guidance: Offers language tables to help define risk clauses clearly, with the aim to achieve equitable terms.
* Use legal references: Supplies flowcharts and case-based guidance to clarify legal perspectives on risk distribution.
* Promote risk allocation model: Recommends the Two-Party Risk Assessment and Allocation Model as a foundational tool for fair risk management.