

**11—120.4(8A) Authorization of limitation of vendor liability and criteria.**

**120.4(1) *General approach.*** The director, in consultation with the department of management, may authorize the procurement of information technology devices and services in which a contractual limitation of vendor liability is provided for. Criteria for determining whether to permit a contractual limitation of vendor liability include all of the following:

*a.* Whether authorizing a contractual limitation of vendor liability is necessary to prevent harm to the state from a failure to obtain the goods or services sought, from obtaining the goods or services at a higher price if the state refuses to allow a contractual limitation of vendor liability, or when the result could be a lower quality good or service.

*b.* Whether the contractual limitation of vendor liability is commercially reasonable when taking into account any risk to the state created by the goods or services to be procured and the purpose for which they will be used.

**120.4(2) *Special circumstances.*** Certain information technology procurements of information technology devices and services expose the state to risks for which the contractual limitation of vendor liability outlined in rule 11—120.5(8A) is not appropriate. The department or applicable agency for which the department is conducting the procurement shall review the risks presented by the particular information technology procurement before initiating the procurement. When either the department or the applicable agency believes a particular information technology procurement may expose the state to risks for which the contractual limitation of vendor liability outlined in rule 11—120.5(8A) is not appropriate, the department or applicable agency shall identify the risks and identify the steps the department or applicable agency believes may help to mitigate the risks. The director or the applicable agency head shall consult with the department of management to determine whether a higher limit of the vendor's contractual liability is appropriate. This determination shall occur before the department issues the competitive selection documents, and the competitive selection documents issued in the procurement shall include the higher limitation on the vendor's contractual liability that the director or the applicable agency head and the department of management have determined to be appropriate for the procurement under consideration.

**120.4(3) *Applicability.*** These rules do not apply to procurements for devices or services procured under a federal tariff or using federal funds, if the federal agency providing the funds imposes any requirements regarding limitation of liability provisions in the resulting contract.

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