

11—120.5(8A) Prohibited limitation of vendor liability provisions.

120.5(1) For information technology procurements, the director authorizes the competitive selection documents and the resulting contract to include a contractual limitation of vendor liability clause that limits the vendor's liability to one times the contract value, as defined in subrule 120.5(3), provided that the foregoing limitation shall not apply to:

a. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence.

b. Claims related to death, bodily injury, or damage to real or personal property.

c. Any contractual obligations of the vendor pertaining to indemnification, intellectual property, liquidated damages, compliance with applicable laws, or confidential information.

d. Claims arising under provisions of the contract calling for indemnification of the state for third-party claims against the state for bodily injury to persons or for damage to real or tangible personal property caused by the vendor's negligence or willful conduct.

120.5(2) For information technology procurements, the director authorizes the competitive selection documents and the resulting contract to include a contractual limitation of vendor liability clause that limits the vendor's liability for consequential, incidental, indirect, special, or punitive damages to the extent the vendor's liability for such damages does not arise out of the items identified in paragraphs 120.5(1) "a" to "d."

120.5(3) For the purpose of this rule, "contract value" means the aggregate total compensation pertaining to a specific project paid by the state to the vendor under the entire term of the contract including all renewals and extensions.

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