



GAINING TRACTION ON THE ROAD TO WIN-WIN: LIMITATIONS ON LIABILITY IN STATE IT CONTRACTING

INCREASED DEMAND, SHRINKING STATE BUDGETS, AND THE NEED FOR CONTRACT REFORM

As state CIOs continue to deploy IT solutions, it is important to recognize the fiscal benefits of transforming the procurement and contracting process to meet the needs of a smaller workforce, budget constraints, and consolidation efforts. While citizen's desire for efficient online services and transparency have led to an increase demand in state and local resources, the state CIOs have had to find innovative ways to make the most out of every IT dollar. Because of these economic factors, the state CIO is faced with advocating for processes and policies that meet the needs of IT contracts in the 21st century. States lacking liability limitation clauses (See "Appendix B" below for a brief summary on the types of liability claims and damages) in IT contracts may experience higher costs for services or find themselves using a less qualified vendor due to dissuaded competition. Unfortunately, those costs may ultimately become a burden that is placed on taxpayers if a strategy for cost containment is not in place. There has been a great deal of progress in establishing rules, practices, and policies for liability limitations in state IT contracts, but an evolving set of flexible terms and conditions should be considered essential to a states ability to effectively provide emerging technology and services to its constituents.

THE ROAD TRAVELED

Before exploring NASCIOs March 2010 survey findings, it is important to revisit the 2004 issue brief, *Walking the Road to Win-Win: NASCIO Procurement Subcommittee Recommendations on Liability Limitations for State IT Contracting*¹. The 2004 survey created a point of reference for unlimited

NASCIO Staff Contact:
 Chad Grant
 NASCIO Policy Analyst
 cgrant@amrms.com

NASCIO represents state chief information officers and information technology executives and managers from state governments across the United States. For more information visit www.nascio.org.

201 East Main Street, Suite 1405
 Lexington, KY 40507
 Phone: (859) 514-9153
 Fax: (859) 514-9166
 Email: NASCIO@AMRms.com

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liability, highlighted the challenges and argued for reform of unlimited liability provisions.

In addition, the NASCIO Procurement Reform Committee released an in depth research brief in October of 2005 that highlighted the fiscal benefits of aligning the functions of IT procurement and enterprise architecture². Although procurement laws and regulations have evolved to provide states and vendors with a framework that is mutually beneficial, that was not always the case. Prior to 1979 the American Bar Association (ABA) did not provide streamlined guidance and a patchwork of laws existed amongst the states. In 2000, the ABA created a model code for state procurement laws and issued the Model Procurement Code (MPC). The goal of the MPC was to establish continuity and foster principles of fair competition. In addition, the National Association of State Procurement Officials (NASPO) has advocated for public sector procurement reforms in an effort to achieve greater savings, more timely processes, and establish best practices for vendor contracts. However, one gap that still remains in several states is unlimited liability clauses for vendors bidding on government IT contracts.

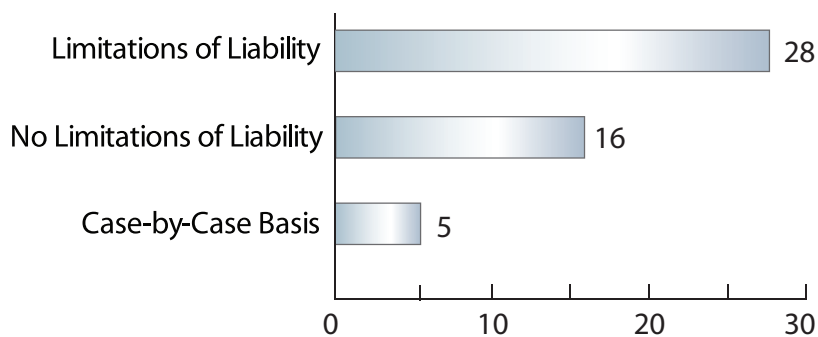
GOVERNING IS IN THE DETAILS

Supported by NASCIO and endorsed by other advocacy efforts, the states have increasingly provided vendors with liability provisions because it is in the best interest of the state to not constrain the market place and allow a competitive bidding process. Companies have recognized the risk and vulnerability of placing an entire business in jeopardy for a contract that is minimal in comparison to the total value of its assets. Because of unlimited liability for vendors in several states, some choose not to participate. This continuing frustration by IT vendors was emphasized in TechAmerica's March 2009 paper on "Transforming Procurement for the 21st Century: Part 1: Reforming IT Contract Terms and Conditions to Improve Procurement Environments and Outcomes."³ It was in TechAmerica's view that:

"inflexible IT terms and conditions developed without industry participation and support can negatively impact all parties to a procurement."

But in an effort to level the playing field between large and small vendors there has been an increase in the number of requests for limitations of liability clauses written into the procurement contracts. In most instances the state IT contracts have resulted in one of the following policy approaches: the state has boilerplate language that it uses when assessing risk-management, the state may adhere to a set of terms for limitations of liability on a case-by-case basis, the state may require costly insurance, the state may require the purchase of a performance bond, or the vendor may decide to not pursue the contract after the state declined to offer limitations of liability. States have claimed that unlimited liability rules or policies narrow the scope of competition in the marketplace.

FIGURE 1: STATE OF THE STATES FOR LIABILITY LIMITATIONS



APPROACH AND HIGHLIGHTS FROM THE SURVEY

Gaining Traction on the Road to Win-Win: Limitations on Liability in State IT Contracts was designed to survey current state contracting requirements or policy approaches and validate anecdotal evidence that progress has been made since 2004. Most importantly, the survey was conducted to answer the question: has unlimited liability become an IT contract provision of the past? In an effort to gain insight into this patchwork of rules and policies, NASCIO requested the IT contracting provisions from all 50 states and the District of Columbia. The diversity of responses, forty-nine states and the District of Columbia, indicates the challenges involved with unlimited liability in state IT contracting. While a wide breadth of interpretations may exist for state laws and provisions, NASCIO's survey did not include an exhaustive content analysis of these finer points. (See "Appendix A")

- **56% (28 states)**, reported that they currently have policies in place that allow either the procurement office, the overseeing agency, the attorney general, or a combination of those authorities to include limits on liability clauses into IT contracts for vendors. This is a drastic change from the 2004 NASCIO survey that reported a majority of states had no liability limitations.
- **32% (16 states)**, conveyed that they still have unlimited liability because of conflicts with the state constitution, legal statutes, or a lack of flexibility in waiving the rights of sovereign immunity.
- **10% (5 states)**, reported that they have some degree of limitations of liability clauses in state IT contract. In most instances these states do not have a boilerplate limitation on liability, but instead grant vendors liability protection on a case-by-case basis. Most of the case-by-case instances have consultations with risk management personnel and oversight by the procurement office, overseeing agency, and attorney general. The District of Columbia also reported that they have some degree of limitations of liability and it is granted on a case-by-case basis.

* Case Study: Oregon

Oregon is currently in the process of reviewing its IT terms and conditions to ensure the state will engage in a more competitive bidding process for contracts. Key state officials from Oregon have engaged in thoughtful procurement reform processes and included the input of the vendor community in an effort to make valuable process improvements. TechAmerica, a major voice in the U.S. technology industry, made the following suggestions as part of the procurement reform initiative:

1. Issue RFP's with standard commercially-accepted contract terms.
2. Accept proposals from all interested and qualified firms.
3. Select an apparent winner and proceed to final contract negotiations directly.
4. Implement strict timeframes for completion of negotiations.

The letter and summary of comments from TechAmerica are available online.⁴

THE ROADS TRAVELED TO REFORM

- A patchwork of rules, policies, and practices exist amongst the states and there are numerous variations for the minimum amount of liability, maximum amount of liability, versions of the clause based on risk, what agency or government body has procurement authority, and who sets the procurement policy.
- The states policies suggest that the minimum amount a vendor is held liable for is either a set dollar amount based on risk or 100% of the contract price to ensure states are made whole in the event that the vendor is unable to fulfill the contract. A few states that have a 100% minimum are Alaska, Mississippi, and North Dakota.
- On average, the limitations on liability for vendors appear to be between 150% and 200% of the contract maximum. Several states that fall into this category are Louisiana, Massachusetts, Michigan, and Nevada. Iowa recently had to undergo legislative changes in order to add limitations of liability into contracts, as did Tennessee in 2004.
- The maximum amount, with exception to unlimited liability, that a vendor is held liable for is usually calculated through the assessment of added risk involved. States like New Jersey start off at 500% of the maximum contract price, but are able to negotiate down to 200% of the maximum contract price through risk management strategies.

THE RIGHT TOOL FOR THE JOB - USING A MULTIPLIER

NASCIO's study has found that many of the states have implemented a policy of limiting liability by applying a multiplier to the value of the contract. With the multiplier method the vendor liability would be calculated by finding equilibrium between "cost, risk, and quality of the product."⁵ (See "Appendix C" below.) The process for finding a reasonable limit to both the state and vendor is a complex equation that includes many variables. Data from the states suggests that there generally is not a boilerplate for the amount of liability the states will provide vendors, but the general floor is 100% of the contract value and the ceiling being generally 500% of the value of the contract. A state IT contract with a liability limitation over 200% of the contract may be warranted for high risk contracts that involve matters such as homeland security and public safety.

CHARTING THE COURSE

In an effort to increase the likelihood of "win-win"⁶ contracts and policy between public sector organizations and vendors, the recommendations by NASCIO are two-fold. The first suggestion would highlight the importance of balancing the true risk involved with state IT procurement contracts and then protect the state against any incurred risk. States that still have contract laws, rules or policies in place with unlimited liability clauses should be reviewed in an effort to broaden competition in the marketplace.

The second suggestion is to review the states legal requirements. While some states already have the legal authority to include limitations of liability clauses into their contracts, others states may have conflicting legal boundaries that may need to be researched. The state CIO and their organizations should consult with their state procurement official, state attorney general or legal counsel when embarking on recommendations for procurement reform.

RECOMMENDATIONS FOR REFORM

The fiscal climate has put an increased strain on all state budgets and pressure to seek innovative ways to consolidate and control costs is growing. States that still have unlimited liability clauses written into IT contracts should consider advocacy efforts to broaden competition in the marketplace. For state CIOs to be able to provide quality IT services, at an affordable rate, many states have begun to provide limitations of liability for IT contracts. As a way to better serve the public in a more fiscally sound manner, NASCIO reaffirms prior recommendations from the Procurement Subcommittee⁷ and supports efforts to review state procurement policies and modify unlimited liability clauses. We urge the states to look at the successes that other states have had and to build upon those provisions to establish a uniform set of terms and conditions for limitations of liability in state IT contracts.

APPENDIX A – WHICH STATES PROVIDE LIMITATIONS ON LIABILITY?

	Yes	No	Amount of Liability Limitations	Procurement/Policy Authority	Website URL for IT Model	Separate Conditions
Alabama		X	n/a	Alabama uses performance bonds at times, but the state does not include limitations on liability	n/a	No
Alaska	X		The contractor's liability for damages to the state for any cause shall be limited to the greater of \$100,000 or the purchase price of the specified equipment which caused the damage or that is the subject matter of, or is directly related to, the cause of action	The attorney general has approved a series of boilerplate forms and in order to amend the conditions of contracts the GSA would need AG approval	http://doa.alaska.gov/dgs/pdf/itb4.pdf	Yes
Arizona		X	n/a	In the process of reviewing the state policy	n/a	No
Arkansas		X	Arkansas can not indemnify any party for liability or damages	The state shall not contract with a party if any provision of a contract violates the laws or constitution of the State of Arkansas	n/a	No
California	X		The contractor's liability for damages to the state for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to two times the purchase price	n/a	http://www.documents.dgs.ca.gov/pd/modellang/GPIT0407.pdf	Yes
Colorado		X	n/a	The state generally disfavors limitations of liability and performs a risk analysis whenever they are proposed	n/a	No
Connecticut	X		The Department of Information Technology (DOIT) usually insists that limitations on liability be mutual and be limited to 2 times the aggregate contract price. In larger deals, the state may use an actual monetary amount but they do not deviate too far from the 2 times formula. The state usually carves negligence or intentional acts out from limitations of liability	DOIT Procurement Policy	n/a	n/a
Delaware		X	n/a	Delaware uses performance bonds to adjust risk with vendors	n/a	Yes
District of Columbia		X	There is not a standard limitation on liability, but the District of Columbia does grant limitations on liability to vendors on a case-by-case basis	CPO and Assistant Director of Procurement have the authority add in limitations on liability, but DC obtains written approval from OAG before including those terms into its contracts	n/a	No
Florida	X		The contractor's liability under a purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the purchase order, or two times the charges rendered by the Contractor under the purchase order	n/a	http://dms.myflorida.com/business_operations/state_purchasing	No
Georgia	X		The contractor's liability to the state for any claim of damages arising out of contracts shall be limited to direct damages and shall not exceed the total amount paid to the contractor for the performance under this contract	n/a	http://doas.ga.gov/StateLocal/SPD/Seven/Pages/Home.aspx	Yes
Hawaii		X	The state grants limitations on liability on a case-by-case basis, but no standard terms or conditions exist	Each agency has control of its procurement of services and are able to negotiate the contracts	n/a	No
Idaho	X		The contractor shall not be liable for incidental, indirect, special, or consequential damages, or for lost profits, savings and revenues of any kind	n/a	http://adm.idaho.gov/purchasing/purchasingrules.html	No

	Yes	No	Amount of Liability Limitations	Procurement/Policy Authority	Website URL for IT Model	Separate Conditions
Illinois		X	Case-by-case basis, usually 100% of contract value	CMS of Illinois is able to negotiate terms based on risk	n/a	n/a
Indiana		X	n/a	There is no policy in place and the standard boilerplate contract does not contain language regarding limitation on liability. If a particular vendor requests it be limited to the amount of the funds paid under the contract, or to a multiple of that, Indiana will typically take that into consideration, but the vendor must request those terms	n/a	No
Iowa	X		No more than 150% of contract maximum	Legislative changes made it feasible for the state to add limitations of liability into the contracts	n/a	Yes
Kansas	X		\$2,000,000 unless there are additional contractual obligations	n/a	http://www.da.ks.gov/purch/contracts/	No
Kentucky		X	Kentucky uses performance bonds as a way to offset liability risks with contractors	n/a	n/a	Yes
Louisiana	X		The contractor's liability for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges for services rendered by the contractor under the contract	n/a	n/a	Yes
Maine	X		The amount of any other actual direct damages up to the greater of \$500,000 or three times the value of the product or service that is the subject of the claim, up to a maximum of \$25,000,000	n/a	http://maine.gov/purchases/forms/BP54%20EO-IT.doc	n/a
Maryland	X		The contractor's liability per claim shall not exceed five (5) times the total amount of the TORFP out of which the claim arises; provided however, the state may, in its sole discretion, decrease the ceiling established hereunder in any TORFP issued pursuant to this RFP	n/a	http://doit.maryland.gov/pages/default.aspx	Yes
Massachusetts	X		Limits liability for "other damages" as defined to \$100,000 or twice the value of the contract services/product	n/a	http://www.mass.gov/Eoaf/docs/osd/forms/req_it.doc	Yes
Michigan	X		The contractor's liability for damages to the state is limited to two times the value of the contract or \$500,000 which ever is higher	n/a	n/a	Yes
Minnesota	X		Office of Enterprise Technology (OET) has several options approved for use in its IT 902-TS Master Contract Program and there are different levels of risk associated with each option. These levels of risk are generally negotiated with vendors on a case by case basis	This language is consistent with state law and the State's Risk Management Office. Would require AG approval for contract revisions	n/a	No
Mississippi	X		1x, 2x, or 3x the contract value	Legislation was passed to grant ITS the authority to negotiate contract language. Prior to legislation, AG approval was required	n/a	n/a
Missouri		X	n/a	Missouri does not apply limits to the contractor liability. They do allow limitations to be provided by the vendor except in situations of personal injury, property damage or copyright infringement	n/a	Yes

	Yes	No	Amount of Liability Limitations	Procurement/Policy Authority	Website URL for IT Model	Separate Conditions
Montana	X		The contractor's liability for contract damages is limited to direct damages and further to no more than twice the contract amount. The contractor shall not be liable for special, incidental, consequential, punitive, or indirect damages.	n/a	http://vendor.mt.gov/lawsrules.mcpdx	Yes
Nebraska	X		The contractor's liability to the state under any purchase order issued under the contract shall be limited to (i) the greater of \$1,000,000.00 or the value of the purchase order (including any amendments), for purchase orders of \$500,000.00 or more, or (ii) the greater of \$100,000.00 or two (2) times the value of the purchase order for all other purchase orders, unless otherwise specified in the purchase order	n/a	http://www.das.state.ne.us/material/statutes.htm	n/a
Nevada	X		Damages for any contractor breach shall not exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" value	The state attorney general's office must approve of any changes made to the contract language	n/a	No
New Hampshire		X	The state uses performance bonds instead of writing in limitations of liability.	The office obtains its authority from the state legislature and they use their own procurement policy, in consultation with the attorney general, to negotiate contracts	n/a	n/a
New Jersey	X		New Jersey does have limitations on liability and the terms start at 500% and have been negotiated down to 200% at times. This is on a case by case basis	They use risk management to access the amount of limitations on liability	http://www.state.nj.us/treasury/purchase/forms.shtml	No
New York	X		2x the purchase price up to \$1,000,000	n/a	http://www.ogs.state.ny.us/purchase/bidcreation.asp	Yes
North Dakota	X		Limits to 1x the purchase price including the first year of maintenance. Elevated risk procurements may justify a 2x or 3x limit	OMB Risk Management may advise against including this language for certain high risk procurements	http://www.nd.gov/itd/planning/procurement/	Yes
North Carolina	X		Limited to 2x the value of the contract	Title 9 of the NC Administrative Code contains the Information Technology Procurement Rules developed in response to Senate Bill 222. The rules are mandatory for use by Executive state agencies and recommended for use by other government entities when procuring IT goods and services.	n/a	Yes
Ohio	X		Neither party is liable for any indirect, incidental or consequential loss or damage of any kind, including but not limited to lost profits, even if the parties have been advised, knew or should have known of the possibility of such damages. The contractor further agrees that the contractor shall remain liable for all direct damages due to the contractor's fault or negligence up to 2x the cost of the total not-to-exceed price	n/a	http://www.das.ohio.gov/Divisions/InformationTechnology/StateofOhioITPolicies/tabid/107/Default.aspx	Yes
Oklahoma		X	n/a	The state commonly adds language to contracts such as: "To the extent any limitation of liability contained herein is construed by a court of competent jurisdiction to be a limitation of liability in violation of Oklahoma Law, such limitation of liability shall be void."	n/a	Yes

	Yes	No	Amount of Liability Limitations	Procurement/Policy Authority	Website URL for IT Model	Separate Conditions
Oregon	X		Oregon has been working to update their IT terms and conditions to be more commercially reasonable. The states limitation of liability clause has a 1x (or 100%) of the maximum-not--to-exceed amount of the contract	Procurement office has control over the policy for terms and conditions	n/a	Yes
Pennsylvania	X		The contractor's liability to the Commonwealth under any PO issued under this Contract shall be limited to the greater of \$250,000 or the value of the PO (including any amendments), unless a limitation between \$250,000 and the value of the PO is otherwise specified in the PO	n/a	n/a	Yes
Rhode Island		X	n/a	Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.	n/a	No
South Carolina	X		With respect to the supplies, services, or software provided, no event shall exceed an amount equal to the total contract price. In no event shall any party be liable to another for any indirect, incidental, punitive, consequential, or special damages, including, without limitation, lost revenues and profits, even if it has been advised of the possibility of such damages	Statutory authority	n/a	Yes
South Dakota		X	To allow limitations on liability it would have to be on a case-by-case basis with attorney general approval	The state attorney general's office must approve any terms and conditions	http://www.state.sd.us/boa/opm/	No
Tennessee	X		2x the amount of the contract	Tennessee's legislature passed language in 2004 that allowed the state to include limitations on liability into the terms and conditions	n/a	Yes
Texas	X		1x the contract amount	The Department of Information Resources is authorized to contract according to Chapter 2054 of the Texas Government Code	http://www2.dir.state.tx.us/ict/contracts/Pages/ProductsServices.aspx	Yes
Utah	X		The state of Utah does not have any standard limited liability clause for their contracts. They do often end up negotiating a limited liability clause for IT contracts. The state will negotiate between 100%-200% depending on the specific contract	n/a	http://purchasing.utah.gov/forms/index.html	No
Vermont		X	n/a	The attorney general sets the terms and conditions of the contract	http://bgs.vermont.gov/sites/bgs/files/pdfs/purchasing/Standard-Contract-Provisions-AttachC.pdf	No
Virginia	X		Liability shall not exceed the greater of 125% of the contract giving rise to the liability, or \$250,000	May require security or payment bond, but VITA has authority over the terms of the contracts	http://www.vita.virginia.gov/scm/default.aspx?id=91	Yes
Washington		X	No cap on liability	The state provides guidance for contracts at an agency level and seek attorney general input as needed	n/a	
West Virginia		X	West Virginia is unaware of any liability limitations for IT contracts	n/a	n/a	No

	Yes	No	Amount of Liability Limitations	Procurement/Policy Authority	Website URL for IT Model	Separate Conditions
Wisconsin	X		The state of Wisconsin does not have a set limitation of liability policy for IT procurements. Typically the state requires unlimited liability related to bodily injury but outside of that they go with the cost of or 150% cost of the contract and get other issues addressed through liquidated damages. The state also, as a rule, waive consequential and incidentals	Policy can vary by agency, but the Bureau of Procurement and the Department of Administration Legal Counsel are working toward a more standard format	n/a	Yes
Wyoming		X	Wyoming does not have limitations on liability included in the boilerplate contracts	The attorney general's office must approve of any changes made to the contract language	n/a	n/a

APPENDIX B – A BRIEF SUMMARY ON THE TYPES OF LIABILITY CLAIMS AND DAMAGES⁸

State IT contracts typically address the types of claims for which a vendor might be held liable. Legal claims can arise from many sources including:

- From the contract itself
- From a warranty that the vendor either explicitly or implicitly made to the state
- From state or federal laws that address tort liability or strict liability
- From federal laws on intellectual property ownership and use.

States may consider addressing in their IT contracts the types of claims for which a vendor might be held liable.

Regarding liability lawsuits, the party found to be responsible commonly is obligated to pay the other party damages. There are many types of damages that might be included within a judgment that a responsible party might pay. They can range from direct damages, which typically are to compensate the injured party "for a loss that is an immediate, natural, and foreseeable result of the wrongful act." However, in some cases, depending upon the jurisdiction in which the lawsuit is brought and the contract language, a responsible party might have to pay indirect damages, which is a category of damages that can be in addition to direct damages. To the right, please find a list of types of indirect damages and definitions for each. These may be helpful during the contract negotiation phase in, and may assist in deciding which types of indirect damages might be included in a vendor's potential liability.

Note that a contract also might specify whether a vendor will be liable for lost profits, revenue, operating savings, goodwill, reasonable attorney's fees, or taxes incurred.

* Definitions⁹

Special or Consequential Damages:

"Damages awarded in an amount deemed to compensate for losses that arise not as a natural result of the injury but because of some particular circumstance of the injured party" or "damages relating to a business, profession, or property that are easily calculable in monetary terms."

Incidental Damages: "Damages recoverable under section 2-715 of the Uniform Commercial Code in breach of contract cases for losses that include expenses incurred in handling and caring for goods which were the subject of the contract, reasonable expenses incurred in obtaining cover, and any other reasonable expenses resulting from the breach that do not fall into any other category."

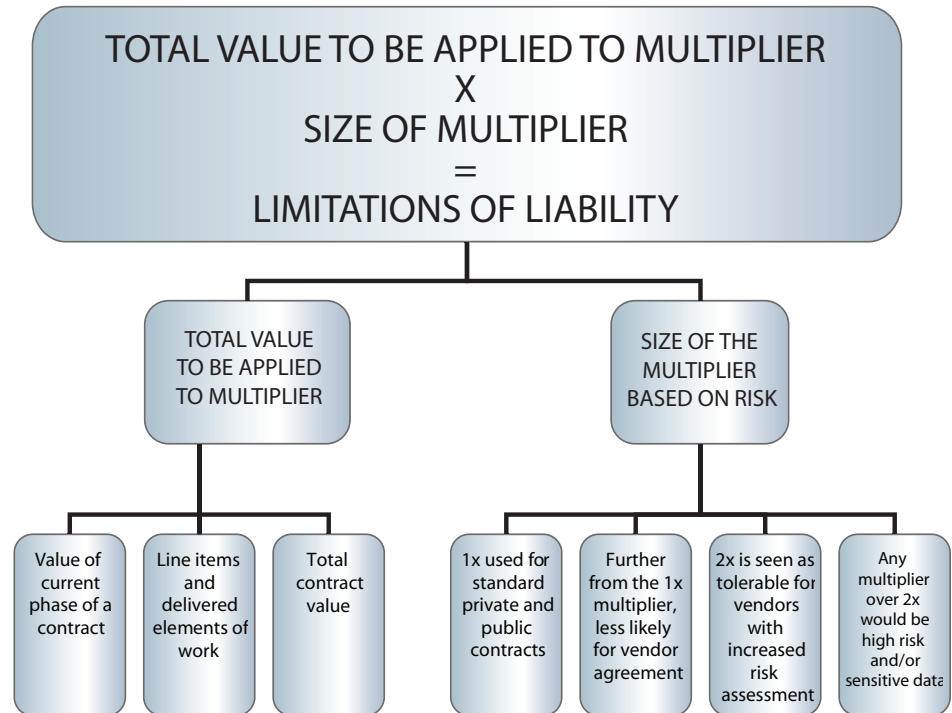
Punitive or Exemplary Damages:

"Damages awarded in cases of serious or malicious wrongdoing to punish or deter the wrongdoer or deter others from behaving similarly."

APPENDIX C – CONTRACTING WITH “MULTIPLIERS”¹⁰

When states are considering IT contracts that include limitations on liability, they must first find a balance between protecting the states interests and establishing terms that are reasonable for vendors. The state must calculate the risk of loss terms in a manner that would provide a liability cap sufficient to “make them whole”¹¹ in the event of the contract not being fulfilled. If the state CIO was to consider the limitations of liability clause as an equation, there would be many variables he or she would need to consider before arriving at a “Win-Win” situation through the vantage point of both the state and the vendors.

FIGURE 2: CONTRACTING WITH “MULTIPLIERS”



APPENDIX D: ENDNOTES

¹ See < http://www.nascio.org/publications/documents/NASCIO-road_to_win-win.pdf>, September 2004.

² See < http://www.nascio.org/publications/documents/NASCIO-EA_IT_Procurement_Brief100305.pdf >, October 2005.

³ See < <http://www.techamerica.org/ps-stateprocurement>>, November 2009.

⁴ See < <http://www.techamerica.org/ps-stateprocurement>>, November 2009.

⁵ State Public Policy Group, "Limitations on Liability in Iowa IT Contracting Report to Iowa Department of Administrative Services," March 20, 2008, <http://www.naspo.org/documents/SPPG_LOL_Report2_031908.pdf> (22 February 2010), 20.

⁶ See < http://www.nascio.org/publications/documents/NASCIO-road_to_win-win.pdf>.

⁷ See < http://www.nascio.org/publications/documents/NASCIO-road_to_win-win.pdf>.

⁸ See < http://www.nascio.org/publications/documents/NASCIO-road_to_win-win.pdf>.

⁹ See < <http://dictionary.lp.findlaw.com>>.

¹⁰ State Public Policy Group, "Limitations on Liability in Iowa IT Contracting Report to Iowa Department of Administrative Services," March 20, 2008, 21.

¹¹ David Navetta, "Developing an Information Security and Privacy Schedule for Service Provider Transactions," Info Law Group Blog, 18 February 2010, <<http://www.infolaw-group.com/2010/02/articles/information-security-contracts/developing-an-information-security-and-privacy-schedule-for-service-provider-transactions-part-two/>> (19 February 2010).