**WV-114**

Created 8/28/2019

**Overview:** The Constitution of the State of West Virginia prohibits State agencies from taking on debt, and extending the State’s credit to third parties. W. Va. Const. art. X, §§ 4 and 6. The State has also long held the position that these limits prohibit a state agency from contractually agreeing to limit a vendor’s liability at a level less than the potential risk.

This risk assessment is intended to assist State agencies in determining whether a Vendor’s proposed liability limit complies with the Constitutional mandate above. *This assessment should not be used to determine appropriate insurance limits. Agencies concerned about appropriate insurance should contact BRIM for more details.*

**Instructions**

Agencies should carefully consider each of the five categories identified and provide the information requested. Each of the categories should be treated as mutually exclusive. This means that a cost identified in one category should not be repeated in another.

Agencies must provide the “Estimated Cost to the State” and the “Probability of Occurrence” for each item. Those values are then multiplied to obtain the “Probability Adjusted Cost”.

Ex: $50,000 x 10% = $5,000

The Probability Adjusted Cost for each item is then added to obtain a total Probability Adjusted Cost for that category. The total Probably Adjusted Cost for each of the 5 categories is then added to arrive at a “Total Risk Valuation”. If the agency identifies other areas of risk that are not covered by this form, the agency can add additional categories to account for those risks and then add the costs to the Total Risk Valuation.

That Total Risk Valuation is then compared to the proposed dollar value of the liability limit. If the Total Risk Valuation is lower than the liability limit then then the liability limit can be included in the contract if the agency so desires.

***Note: The agency is not required to agree to a Vendor’s proposed liability limit and is permitted to reject a proposed limit without completing this form.***

**Contract Information:**

Solicitation/Contract Number: [insert information here]

Commodity/Service Contracted For: [insert information here]

Vendor: [insert information here]

Agency: [insert information here]

**Proposed Liability Limit:**

Please quote below the proposed contract language that would establish the vendor’s proposed liability limit.

[insert liability limit language here]

**Assessment:**

1. **Risk of Temporary Interruption** 
   1. Identify the types of temporary interruption that could occur in this contract and the consequences associated with them.

[insert information here]

* 1. Complete the chart below to provide an estimate of the cost of the risk associated with a Temporary Interruption.

|  |  |  |  |
| --- | --- | --- | --- |
| **Potential Costs** | **Estimated Cost to the State** | **Probability of Occurrence** | **Probability Adjusted Cost** |
| Lost Revenue |  |  |  |
| Cost of Replacement |  |  |  |
| Loss of Funding |  |  |  |
| Cost of Inability to Perform Mission |  |  |  |
| Penalties or Fines Against Agency |  |  |  |
| Potential Litigation |  |  |  |
| Other Mitigation Costs |  |  |  |
| Other Costs |  |  |  |
| **Total** |  |  |  |

1. **Permanent Contract Interruption (vendor bankruptcy, service termination, etc.)**
   1. Identify the types of permanent interruption that could occur in this contract and the consequences associated with them.

[insert information here]

* 1. Complete the chart below to provide an estimate of the cost of the risk associated with a Permanent Interruption.

|  |  |  |  |
| --- | --- | --- | --- |
| **Potential Costs** | **Estimated Cost to the State** | **Probability of Occurrence** | **Probability Adjusted Cost** |
| Lost Revenue |  |  |  |
| Cost of Replacement |  |  |  |
| Loss of Funding |  |  |  |
| Cost of Inability to Perform Mission |  |  |  |
| Penalties or Fines Against Agency |  |  |  |
| Potential Litigation |  |  |  |
| Other Mitigation Costs |  |  |  |
| Other Costs |  |  |  |
| **Total** |  |  |  |

1. **Consequences and Cost of System/Data breach**
   1. Identify the types of system/data breach that could occur in this contract and the consequences associated with them. This analysis should include the number of potential records that could be compromised and the privacy implications of disclosure of those records. The State’s Chief Privacy Office has developed a Privacy Impact Assessment to assist with this.

[insert information here]

* 1. Complete the chart below to provide an estimate of the cost of the risk associated with a Systems/Data breach.

|  |  |  |  |
| --- | --- | --- | --- |
| **Potential Costs** | **Estimated Cost to the State** | **Probability of Occurrence** | **Probability Adjusted Cost** |
| Lost Revenue |  |  |  |
| Cost of Replacement |  |  |  |
| Loss of Funding |  |  |  |
| Cost of Inability to Perform Mission |  |  |  |
| Penalties or Fines Against Agency |  |  |  |
| Potential Litigation |  |  |  |
| Other Mitigation Costs |  |  |  |
| Other Costs |  |  |  |
| **Total** |  |  |  |

1. **Damage to Existing State Assets** 
   1. Identify any existing state assets that could be damaged by a failure of the product or service being received and how that damage could occur.

[insert information here]

* 1. Complete the chart below to provide an estimate of the cost of the risk associated with a failure.

|  |  |  |  |
| --- | --- | --- | --- |
| **Potential Costs** | **Estimated Cost to the State** | **Probability of Occurrence** | **Probability Adjusted Cost** |
| Lost Revenue |  |  |  |
| Cost of Replacement |  |  |  |
| Loss of Funding |  |  |  |
| Cost of Inability to Perform Mission |  |  |  |
| Penalties or Fines Against Agency |  |  |  |
| Potential Litigation |  |  |  |
| Other Mitigation Costs |  |  |  |
| Other Costs |  |  |  |
| **Total** |  |  |  |

1. **Damage to Third Parties**
   1. Identify any third parties that could be damaged by a failure of the product or service being received and how that damage could occur.

[insert information here]

* 1. Complete the chart below to provide an estimate of the cost of the risk associated to third parties with a failure.

|  |  |  |  |
| --- | --- | --- | --- |
| **Potential Costs** | **Estimated Cost to the State** | **Probability of Occurrence** | **Probability Adjusted Cost** |
| Lost Revenue |  |  |  |
| Cost of Replacement |  |  |  |
| Loss of Funding |  |  |  |
| Cost of Inability to Perform Mission |  |  |  |
| Penalties or Fines Against Agency |  |  |  |
| Potential Litigation |  |  |  |
| Other Mitigation Costs |  |  |  |
| Other Costs |  |  |  |
| **Total** |  |  |  |

**Total Risk Valuation (add totals from items 1 through 5 above) $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Liability Limit v. Risk Comparison:**

1. **Liability Limit** – The Vendor’s liability limit language quoted above would limit the vendor’s total liability under the proposed contract to $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. **Total Risk Valuation** – As noted above, the total risk valuation is $\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**Conclusion:**

As shown herein, the Total Risk Valuation of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is lower than the contractual liability limit of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that the vendor has requested. For this reason, the Agency is requesting that the contractual liability limit be accepted.

Or

As shown herein, the Total Risk Valuation of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is higher than the contractual liability limit of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that the vendor has requested. For this reason, the Agency understands that the requested contractual liability limit must be either revised to an amount lower than the Total Risk Valuation or rejected entirely.

Agency Authorized Signature:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_