



Legislative Fiscal Bureau

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December 7, 2011

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Military Affairs: Section 13.10 Request to Approve the Proposed Hazardous Materials Response Network Taskforce Contracts -- Agenda Item Ia

REQUEST

On November 29, 2011, the Department of Military Affairs (DMA) submitted four hazardous materials response network taskforce contracts for review by the Joint Committee on Finance pursuant to s. 323.70(6) of the statutes. On December 1, 2011, DMA was notified that an objection had been raised to the request. As a result, the review of these contracts is before the Committee under s. 13.10 of the statutes.

BACKGROUND

In 1984 there was an accidental release of methyl isocyanate from a pesticide plant in Bhopal, India, in which more than 2,000 people suffered death or serious injury. In response, in 1986 the federal government passed the Emergency Planning and Community Right-to-Know Act (EPCRA). Federal law requires local communities to develop emergency plans for possible hazardous chemical releases.

In implementing federal law, state statute provides for the creation of local emergency planning committees by county boards of supervisors. These committees include locally elected officials, emergency response personnel, the public, and operators of affected chemical facilities. The emergency planning of these committees addresses chemical hazards at facilities and various transportation routes across the state.

Under EPCRA and state statute, all facilities in the state at which a hazardous chemical is present at or above an applicable threshold quantity must comply with federal reporting requirements and is a "reporting facility." A "reporting facility" is required by the federal

Occupational Safety and Health Administration (OSHA) to maintain Material Safety Data Sheets on all hazardous chemicals. Such a "reporting facility" must also file with DMA an inventory list of all hazardous chemicals that meet or exceed the threshold planning quantity for each chemical during the reporting year. There are currently 7,347 reporting facilities across Wisconsin.

Under EPCRA and state statute, a "planning facility" is a subset of reporting facilities with extremely hazardous chemicals that meet or exceed the threshold planning quantity for each applicable extremely hazardous chemical during the reporting year. A "planning facility" must work with the applicable local emergency planning committee at the county to develop an off-site plan. The Department indicates that, "Individual facility off-site plans include: facility name and location, name of facility emergency planning coordinator with 24 hr. contact phone number, list of primary emergency responders, list of resources available from/at facility, list of outside resources available, hazard analysis of the facility with a vulnerability zone for release of EHS [extremely hazardous chemicals] stored at facility, identification of special facilities (i.e., schools, hospitals, nursing homes, day care centers, etc.) within the zone, population protection procedures (sheltering and evacuation) and attachments." There are currently 2,478 planning facilities across Wisconsin.

Current law provides that DMA must contract with no more than nine regional emergency response teams, one of which must be located in La Crosse County, to respond to level A releases of hazardous substances. State statute provides that a level A release "means a release of a hazardous substance that necessitates the highest level of protective equipment for the skin and respiratory systems of emergency response personnel." Hazardous substances may include industrial chemicals, fertilizers, pesticides, petroleum products, explosives and radioactive substances. For the period from July 1, 2011, through December 31, 2011, the state has eight contracts with the following regional emergency response teams: Eau Claire/Chippewa Falls, La Crosse, Madison, Milwaukee, Oshkosh/Appleton, Racine, Superior, and Wausau.

Local emergency planning committees are eligible for emergency planning grants not to exceed \$10,000, for up to 80% of the costs of computers and emergency response equipment, if the committee identifies a local emergency response team that is capable of responding to a level B release that occurs at any place in the county and whose members meet the standards for hazardous materials technicians under federal administrative rules and National Fire Protection Association standards. State statute provides that a level B release "means a release of a hazardous substance that necessitates the highest level of protective equipment for the respiratory systems of emergency response personnel, but less skin protection than a level A release, because operations at the site of the release do not involve a high potential for exposure to liquids or particulates that are harmful to the skin or capable of being absorbed through intact skin."

While county level B teams are an important part of the state's capability to respond to hazardous substance releases, the contracts before the Committee address the state system for responding to level A hazardous substance releases.

ANALYSIS

Under the 2009-11 regional emergency response team contracts negotiated by DMA, the funding for the Wausau regional emergency response team was reduced by \$40,000 annually, and the funding for the Madison and Milwaukee regional emergency response teams was increased by an offsetting \$40,000 annually (\$20,000 each). The Department indicates that the "fiscal decision to realign funding within the existing regional hazardous material program in 2009 caused concern within the firefighting community statewide." These concerns have led DMA and the regional emergency response teams to review the funding and structure for the state's response to level A releases.

In June of 2011, DMA submitted six month extensions of the current regional emergency response team contracts in order to permit DMA and the regional teams to review and propose changes to the system. Appendix I reflects the division of the state into the current eight regions. Under the current system, each regional team is contractually responsible for responding to a level A hazardous chemical release within its region.

On November 29, 2011, DMA submitted the proposed changes to the program in the form of four hazardous materials response network taskforce contracts. As indicated in Appendix II, under the proposed contracts the state would now be divided into four regions to be serviced by the northwest, northeast, southwest, and southeast taskforces. Unlike the current system, however, under the new system agencies across the state in each of the four taskforces would respond to a level A release based on response time instead of which region the level A release occurred. Appendix III identifies the location of all agencies that would participate in the four regional taskforces under the proposed contracts.

Under the proposed contracts, the state would make use of the National Incident Management System (NIMS) and categorize or type the resources and capabilities of the agencies participating in the four taskforces. Under NIMS, these agencies would be classified as Type I, II, or III teams. A Type III team would be a team that is appropriately equipped and trained to handle and respond to a chemical release when it is known which chemical was released, in liquid, aerosol, powder and solid forms. A Type III team would not be expected to be fully equipped to intervene and handle: (a) vapor/gas emergencies; or (b) incidents involving weapons of mass destruction (WMD) chemical and biological substances.

A Type II team would be qualified to handle and respond to all situations to which a Type III team could respond. In addition, a Type II team would be a team that is appropriately equipped and trained to handle and respond to a chemical release when it is unknown what chemical was released, in liquid, aerosol, powder, solids, and vapor/gas forms. A Type II team would not be expected to intervene and handle incidents involving WMD chemical and biological substances.

Finally, a Type I team would be qualified to handle and respond to all situations to which a Type III or II team could respond. In addition, a Type I team would be appropriately equipped and trained to handle and respond to all identified and unidentified WMD chemical and biological substances. The location of the teams across the state would be designed to permit the

participating agencies to respond to a Type III release within 60 minutes, a Type II release within 90 minutes, and a Type I release within three hours.

Table 1 identifies the teams that would make up each of the four taskforces, including: (a) their designation as Type I, II and III teams; (b) whether the teams are existing regional teams under the current contracts, or would be newly participating teams under the proposed contracts; and (c) the amount of the annualized allocation to the team under the proposed contracts.

TABLE 1

Teams Under the Proposed Regional Taskforces

<u>Taskforce</u>	<u>Team Type</u>	<u>Team</u>	<u>New or Existing Team</u>	<u>Annualized Award</u>
Northeast	Type I	Cities of Appleton and Oshkosh	Existing	\$148,400
	Type II	City of Marinette	New	36,835
		City of Wausau	Existing	77,993
	Type III	Oneida County	New	36,835
		Brown County	New	5,000
		Waupaca County	New	<u>5,000</u>
				\$310,063
Northwest	Type I	Cities of Eau Claire and Chippewa Falls	Existing	\$104,065
	Type II	City of Ashland	New	29,587
		City of Superior	Existing	56,261
	Type III	Barron County	New	5,000
		Dunn County	New	<u>5,000</u>
				\$199,913
Southeast	Type I	City of Milwaukee	Existing	\$256,277
	Type II	City of Racine	Existing	93,447
	Type III	Dodge County	New	5,000
		Ozaukee and Washington Counties	New	5,000
		Sheboygan County	New	<u>5,000</u>
				\$364,724
Southwest	Type I	City of Madison	Existing	\$167,998
	Type II	City of La Crosse	Existing	64,010
	Type III	Columbia County	New	5,000
		Grant County	New	5,000
		Juneau County	New	5,000
		Rock County	New	5,000
		Vernon County	New	<u>5,000</u>
				\$257,008
			Total	\$1,131,708

The staff of DMA indicates that the amounts paid to the regional emergency response teams

under the current contracts are substantially the product of historic negotiations. The regional teams continued to receive these amounts in subsequent contracts although in recent biennia the amount of funding available for allocation has been reduced due to budget reductions. The regional emergency response teams could utilize funding allocations for specialized training expenses, team member physicals, response vehicles and equipment purchases, as well as maintenance of vehicles, administrative time and overhead.

Under the proposed contracts, the amounts allocated to the existing and new teams would now be allocated based on a newly developed formula. First, all Type I and Type II teams would receive a base allocation based on annual stipend amounts provided to participating firefighters (\$1,200 per firefighter for Type I teams, \$800 per firefighter for existing Type II teams, and \$400 per firefighter for new Type II teams). In addition, as a part of the base allocation, all teams (Type I, II, and III teams) would receive \$425 per firefighter for the cost of annual physicals.

In addition to the base allocation, under the newly developed formula under the proposed contracts, Type I and II teams would receive a supplemental allocation amount based on the percentage of population, reporting facilities, and planning facilities in the taskforce region attributable to the individual Type I or II team. This supplemental allocation would be intended to distribute additional resources to teams based on an analysis of risk. This supplemental allocation could be utilized by the participating fire department for maintenance of vehicles, administrative time and overhead.

Table 2 identifies the: (a) annualized amounts received by the existing regional emergency response teams under the current contracts; (b) annualized base, supplemental, and total amounts received by these teams under the proposed contracts; and (c) the percent change in funding under the proposed contracts. Under 2011 Act 32, \$1,247,400 GPR annually is appropriated for payment to the regional emergency response teams. While the existing regional emergency response teams receive all of this funding under the current contracts, under the proposed contracts these teams would experience a net 22% reduction in funding to \$968,452 annually. Table 2 also identifies how the remaining funding provided under Act 32 would be allocated under the new formula. Funds totaling \$103,257 annually would be provided to the new Type II teams (City of Ashland, City of Marinette, and Oneida County). In addition, \$60,000 annually would be provided to the new Type III teams. Finally, \$115,691 annually would be set aside for equipment grants to the various teams. Equipment grant awards would be determined by DMA at a later time. As a result, the funding reductions identified in Table 2 may overstate the final reduction incurred by a team, as a team may receive some additional funding in the form of equipment grants.

TABLE 2

**Funding of Existing Regional Emergency Response Teams
under the Current and Proposed Contracts**

	Team Type	Current Award	Proposed Contracts			% Change
			Base Allocation	Supplemental Allocation	Total Allocation	
Eau Claire/Chippewa Falls	Type I	\$158,030	\$71,500	\$32,565	\$104,065	-34.2%
La Crosse	Type II	105,070	31,850	32,160	64,010	-39.1
Madison	Type I	190,129	71,500	96,498	167,998	-11.6
Milwaukee	Type I	268,686	71,500	184,777	256,277	-4.6
Oshkosh/Appleton	Type I	173,957	71,500	76,901	148,401	-14.7
Racine	Type II	107,504	31,850	61,597	93,447	-13.1
Superior	Type II	131,935	31,850	24,411	56,261	-57.4
Wausau	Type II	<u>112,089</u>	<u>31,850</u>	<u>46,143</u>	<u>77,993</u>	-30.4
Subtotal		\$1,247,400	\$413,400	\$555,052	\$968,452	-22.4%
New Team Allocations	Type II				103,257	
	Type III				60,000	
Equipment Set Aside					<u>115,691</u>	
Total					\$1,247,400	

Department staff has expressed the view that the new formula would provide more accountability for how the grant funds for the regional teams are utilized. Instead of grants to the teams as under current contracts where the local fire departments have broader discretion in how the funds are utilized, under the proposed formula: (a) base allocations would be specifically provided for firefighter stipends and annual physicals; and (b) the equipment set-aside would be allocated in grant awards to accomplish and further specific equipment acquisition goals for level A responses. Local fire departments would continue to exercise some discretion in how they utilized the supplemental allocation funding.

As the Legislative Audit Bureau noted in its 2002 evaluation of the regional hazardous materials response teams, "While most accidental releases of hazardous materials pose limited danger, the potential for significant harmful effects is always present, as demonstrated by the 1992 train derailment that released chemicals into the Nemadji River in Superior and the 1996 train derailment in Weyauwega that led to the evacuation of 1,700 people from the city." If the Committee concurs with the proposed changes as to how hazardous materials teams would respond to level A releases, including the allocation of funding under the new formula, the Committee could approve the contracts. [Alternative 1]

It may be worth noting that the appropriated resources to respond to level A releases through the regional teams have not increased in recent years. During the 2001-03 biennium, the state appropriated \$1.4 million GPR annually for payments to the regional hazardous materials response teams. During the 2009-11 biennium, the state appropriated \$1,386,000 GPR annually for these payments. Under 2011 Act 32, a 10% budget reduction was applied to this appropriation reducing

funding for the regional teams by \$138,600 GPR annually, to \$1,247,400 GPR annually.

If the Committee has concerns regarding the reductions to some of the existing teams under the proposed formula, the Committee could consider: (a) authorizing DMA to enter into the four hazardous materials response network taskforce contracts; and (b) authorizing DMA to modify these contracts through the remainder of the biennium so that no existing team has its funding reduced, after application of the new formula, by more than 25%. [Alternative 2] Table 3 identifies the additional funding that would be provided under this alternative to the Eau Claire/Chippewa Falls, La Crosse, Superior, and Wausau teams. This alternative would partially restore the 10% budget reduction imposed on the regional teams under Act 32 and utilize the funding to mitigate the reductions to existing teams under the new formula.

Funding for the alternative could be provided from amounts reserved to the Joint Committee on Finance's GPR supplemental appropriation for Capitol security costs. As a result, the formula awards to other teams would not have to be reduced. Under Act 32, \$10 million GPR was placed in the Committee's reserve appropriation for potential costs associated with security at the Capitol in 2011. Through December 6, 2011, \$8,155,700 GPR has been released for these costs. The Department of Administration indicates that no additional release requests are anticipated. In addition, under Senate Bill 40 as passed by the Senate, \$800,000 GPR would be transferred from the Committee's GPR appropriation from monies reserved for Capitol security to support the costs of advanced manufacturing skills grants for technical colleges. [Senate Bill 40 is currently in the Assembly.] As a result, \$1,044,300 GPR remains from the Capitol security reserve amount, if SB 40 is enacted.

TABLE 3

**Additional Funding to Limit Allocation Reductions
to Existing Teams to no more than 25%**

<u>Team</u>	<u>2011-12</u>	<u>2012-13</u>
Eau Claire/Chippewa Falls	\$7,250	\$14,500
La Crosse	7,400	14,800
Superior	21,350	42,700
Wausau	<u>3,100</u>	<u>6,100</u>
Total	\$39,100	\$78,100

Alternatively, if the Committee has reservations about the proposed system and funding for responding to level A releases and wants DMA and the teams to revise the proposed contracts, the Committee could consider: (a) denying the DMA request to enter into the four hazardous materials response network taskforce contracts submitted to the Joint Committee on Finance for its review on November 29, 2011; (b) authorizing DMA to extend the current contracts (under the same financial terms) with the eight existing regional teams through June 30, 2012; and (c) directing DMA to resubmit hazardous materials response network taskforce contracts for 2012-13 for review

by the Committee no later than April 1, 2012. [Alternative 3]

If the Committee wishes to maintain the current funding and system for the existing eight regional teams, the Committee could consider: (a) denying the DMA request to enter into the four hazardous materials response network taskforce contracts submitted to the Joint Committee on Finance for its review on November 29, 2011; and (b) authorizing DMA to extend the current contracts (under the same financial terms) with the eight existing regional teams through June 30, 2013. [Alternative 4]

Finally, the Committee could consider denying DMA's request to approve the proposed contracts. [Alternative 5] Under this alternative, however, DMA, the regional teams, and the Committee would still need to approve new contracts before the end of 2011 as the current contracts expire on December 31, 2011.

ALTERNATIVES

1. Authorize the Department of Military Affairs (DMA) to enter into the four hazardous materials response network taskforce contracts submitted to the Joint Committee on Finance for its review on November 29, 2011.

2. Authorize DMA to enter into the four hazardous materials response network taskforce contracts submitted to the Joint Committee on Finance for its review on November 29, 2011. In addition, after calculation of allocation amounts utilizing the new formula provide these additional allocation amounts to the following teams to limit reductions to no more than 25% of current awards: (a) Eau Claire/Chippewa Falls, \$7,250 in 2011-12, and \$14,500 in 2012-13; (b) La Crosse, \$7,400 in 2011-12, and \$14,800 in 2012-13; (c) Superior, \$21,350 in 2011-12, and \$42,700 in 2012-13; and (d) Wausau, \$3,100 in 2011-12, and \$6,100 in 2012-13. Transfer \$39,100 GPR in 2011-12, and \$78,100 GPR in 2012-13, from amounts reserved for Capitol security costs under the Joint Committee on Finance s. 20.865(4)(a) GPR supplemental appropriation to the s. 20.465(3)(dd) GPR regional emergency response teams appropriation to provide funding for these additional allocations. If DMA and the participating teams amend the contracts to reflect this modification, the 2011-13 contracts would not need to be re-submitted to the Committee for its approval under s. 323.70(6) of the statutes.

3. Deny the DMA request to enter into the four hazardous materials response network taskforce contracts submitted to the Joint Committee on Finance for its review on November 29, 2011. Instead, authorize DMA to extend the current contracts (under the same financial terms) with the eight existing regional teams through June 30, 2012. Direct DMA to resubmit hazardous materials response network taskforce contracts for 2012-13 for review by the Joint Committee on Finance no later than April 1, 2012. If DMA and the current regional teams extend their existing contractual relationship through June 30, 2012, the six month contract extensions would not need to be submitted to the Committee for its approval under s. 323.70(6) of the statutes.

4. Deny the DMA request to enter into the four hazardous materials response network taskforce contracts submitted to the Joint Committee on Finance for its review on November 29,

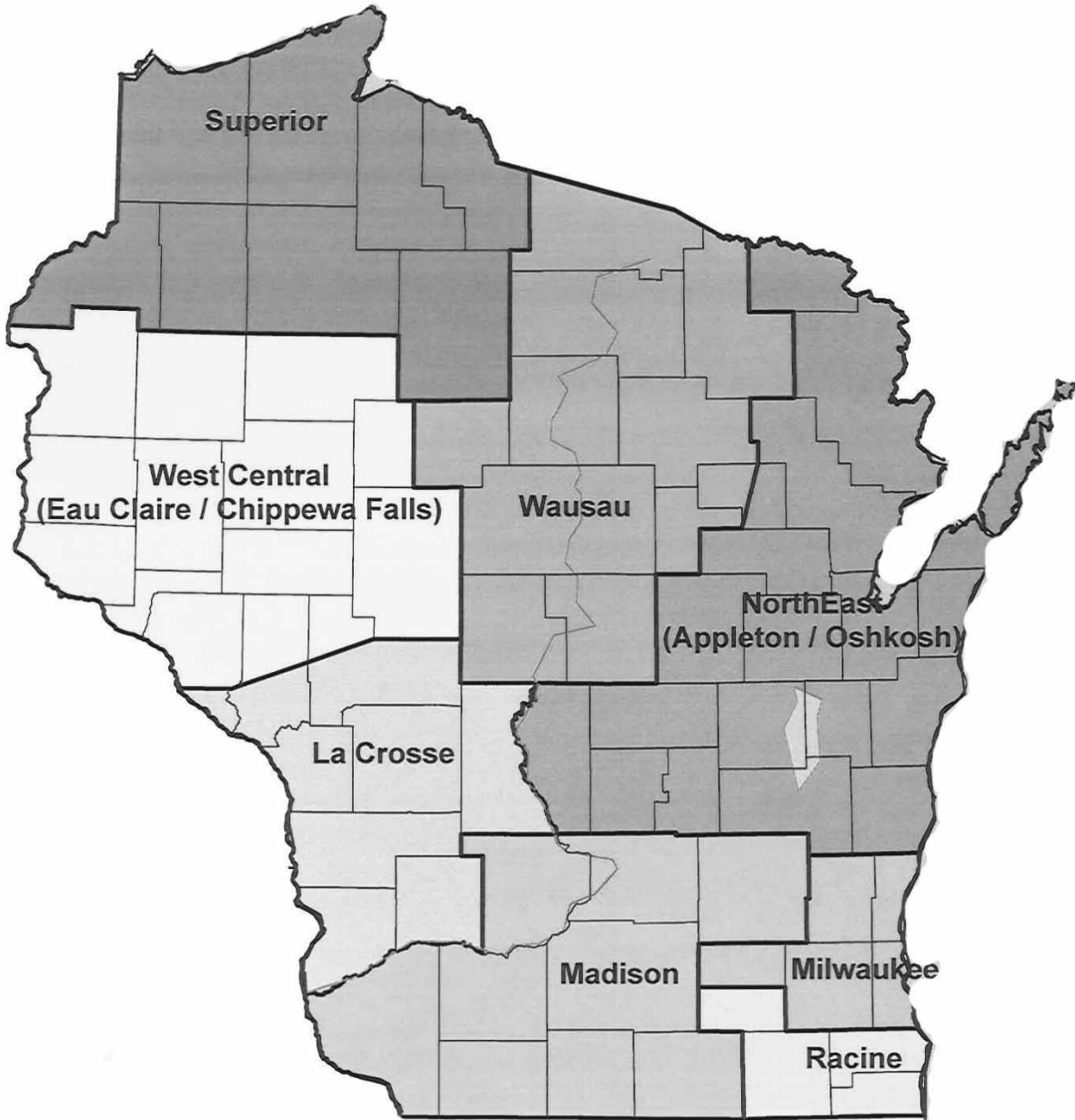
2011. Instead, authorize DMA to extend the current contracts (under the same financial terms) with the eight existing regional teams through June 30, 2013. If DMA and the current regional teams extend their existing contractual relationship through June 30, 2013, the 18-month contract extensions would not need to be submitted to the Committee for its approval under s. 323.70(6) of the statutes.

5. Deny the request.

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Attachments

APPENDIX I

Division of the State Between the Eight Current Regional Hazmat Teams



APPENDIX II

Division of the State Among the Four Proposed Regional Taskforces



APPENDIX III

Location of the Type I, II, and III Teams Under Proposed Regional Taskforces



Source: Department of Military Affairs