The background of the cover features a large, semi-transparent image of the Wisconsin State Capitol building, showing its iconic dome and classical architectural details. At the top of the page, there is a decorative graphic consisting of several wavy, horizontal stripes in red and white, resembling the top portion of the American flag.

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*Governor*

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*Executive Director*

# *Wisconsin Hazmat Program Review- Phase 1*

## *2009*

*A review of the contractual and fiscal process for the Level A  
Hazmat Teams*



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are available at:

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This report was funded through a grant from the U.S. Department of Homeland Security



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November 2, 2009

I am pleased to present the Wisconsin Hazmat Program Review Phase I report. I am grateful to the committee for their hard work over the past 90 days and am confident that the recommendations contained in the report will pave the way for Wisconsin Emergency Management, in close collaboration with the fire chiefs of the regional hazmat teams, to greatly improve the way the program is administered for the benefit of the entire state.

The study, undertaken by the Office of Justice Assistance at my request, reviewed the history of the program and the processes used to administer the contracts. The review team examined an extensive number of documents and conducted interviews of the major stakeholders. Close oversight of the review was provided by a working group made up of Wisconsin Emergency Management, Department of Military Affairs, Office Justice Assistance, and Wisconsin State Fire Chiefs' Association representatives. Again, I want to thank all the participants for their time, effort, and valuable input in preparing this report.

Implementation of the recommendations will require sustained effort and dedication on the part of both Wisconsin Emergency Management and the hazmat chiefs. While some of the proposed changes may involve additional responsibilities, I ask for the commitment of all the stakeholders to making the necessary improvements. Ultimately, we must all work together to ensure the success of this statewide program.

The review team has already begun work on a research plan for the Phase II study. This phase of the study will evaluate the regional hazmat capability more broadly and offer substantive recommendations to improve how we provide this service to communities across the state. Phase II will also serve as an opportunity for direct stakeholder engagement in determining how the Phase I study is implemented, particularly those recommendations involving roles, standards, reporting processes, and a funding formula.

I look forward to continuing to work with the fire chiefs in making improvements to the regional hazmat program on behalf of the citizens of Wisconsin.

A handwritten signature in black ink, appearing to read 'Donald P. Dunbar'.

Donald P. Dunbar  
Brig Gen, (WI) WING  
The Adjutant General



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*Wisconsin Hazmat Program Review- Part 1*

## I. Introduction

This report presents the findings of a study, conducted by the Office of Justice Assistance (OJA), of the Regional Hazardous Materials Response Team program administered by Wisconsin Emergency Management (WEM). The study was requested by Brigadier General (WI) Donald Dunbar in July 2009 as a result of questions raised by a number of hazmat teams regarding the allocation of funds during the most recent contract (2009-2011). The purpose of the study is to review both the contractual and fiscal process and the substantive regional team framework and offer recommendations on how to improve the program. The study will be broken into two phases; the first report addresses the contractual and fiscal process and the second report will address more substantive questions of how the state's hazmat program should be constructed and implemented. This report presents the findings of the Phase I analysis. Appendix A lists all acronyms used in this report.

A Hazmat Working Group has been established to oversee the study and ensure complete transparency in the way the study is conducted. OJA staff performed the majority of the data collection and analysis, which included reviewing past documents about the program such as the legislation governing the program, the original Requests for Proposal (RFP) developed by the State Emergency Response Board (SERB) and the responses submitted by the fire departments and the contracts and other files held by WEM. OJA staff also interviewed a number of key officials involved with the program in the past and present.

### **Hazmat Working Group**

The Adjutant General (TAG)  
TAG's Executive Assistant  
DMA Legal Counsel  
WEM Emergency Fire Services Coordinator  
A representative of the Fire Chiefs Association  
OJA Homeland Security Program Director  
OJA Fire Service Program Manager (report author)  
OJA Planning Specialist (report authors)

The purpose of this report is to examine the state's hazmat program as it exists in its present form. The Phase I analysis offers a brief historical sketch and reviews the processes used to issue contracts and make funding allocations. The Phase I report concludes by offering several recommendations on how to improve the programmatic and fiscal procedures used to administer the program.

Some constraints of this initial study must be recognized. First and foremost, the Phase I study was designed to be completed within 90 days, and this timeframe limited the number of stakeholder interviews that could be conducted. However, the second study with its more expansive timeframe and scope will allow a more in-depth, comprehensive project. In the selection for stakeholder involvement it must be noted that there has been significant turnover in the ranks of the fire chiefs, as well as state officials, since the program's inception. As a result, there is a lack of continuity of perspective from nearly all stakeholders we consulted. Only one person consulted during this study has continually been involved since the original development of the program.

**A. History**

Wisconsin Emergency Management (WEM), contracts with municipal fire departments in eight regions of the state to respond to releases of hazardous substances such as industrial chemicals, fertilizers, pesticides, petroleum products, explosives, and radioactive substances in industrial accidents and transportation and other incidents. The teams are known as Level A hazmat teams. Each of these teams receives an allocation from WEM to fund equipment, training, vehicles, and personnel. The total amount allocated for this program is \$1.4 million annually. The contracts awarded to the teams ensure that they have adequately trained and equipped staff capable of responding to incidents that require the highest level of skin and respiratory protection anywhere in their respective regions (2002 LAB Report, p.7).

The teams have two major functions. The primary function is to respond to Level A hazmat incidents. The second function, which helps lessen the need for the first, is to engage in outreach and educate other fire departments in their response jurisdiction. The goal of the outreach is to “coordinate response planning with Level B teams and other local responders and to raise public awareness of hazardous materials present in their community”(2002 LAB Report, p.22).

Level A and Level B incidents are differentiated based on the type of protective gear needed to respond. Level A response requires the highest level of protection for skin, eyes and the respiratory system while Level B response requires a high level of respiratory protection but less skin protection (HERC Report p.34-35). However, only the eight state regional response teams are recognized as Level A teams and are therefore, awarded contracts by WEM and enjoy liability protection under state law.

<p><b>8 Regional Hazmat Teams</b> Appleton/Oshkosh Chippewa Falls/Eau Claire La Crosse Madison Milwaukee Racine Superior Wausau</p>
---

In the early 1990s, The State Emergency Response Board (SERB) wrote an RFP that received 65 responses. Eight teams were chosen from the RFP process, although the eight original teams are not the same as they are today. The text box to the left shows the eight current teams. By the early 2000s, some teams were consolidated and one team was added. Between 1993 and 1996, the first round of contracts was signed with the teams. It took three years to complete all the contract negotiations for the first contract,

as each team negotiated with the SERB representative and DMA Legal Counsel individually. A series of one and two-year contracts were signed during the time period of 1993-2000. There was not a uniform contract period until 2000. In 1997-98, new legislation required that all contracts go through a passive review process with the Joint Finance Committee. In 2000, DMA Legal Counsel had all eight teams sign two year contracts so that all teams are now on the same schedule. Appendix B is a chart that shows the history of each contract for all the teams, including the amount of funding they received under each contract. The first several years of the program, contractual language changed as program changes were made and some contracts with teams went through several revisions, while language was being updated and formalized. Since 2000, the contractual language has remained the same. Appendix C is an example of the current

contract language and funding allocation. Exhibit E of the contract shows funding categories within the contract.

### ***B. Legislative Requirements***

In 1991 Wisconsin Act 104 as codified 166.215 Wis Stats., created the requirement for the establishment of hazardous materials regional response teams to assist in emergency response to Level A hazmat releases through the State of Wisconsin. On July 1, 1998 all duties of the SERB, including contractual obligations, were statutorily transferred to WEM. The most recent legislation supporting this initiative, Chapter 323.70 Wis Stats., became effective October 21, 2009.

Below is the evolution of legislation that has been passed since 1991, regarding the hazmat program. The evolving legislation has made significant changes to the program, including providing liability and worker's compensation, changing program administration from the SERB to WEM, changing the maximum number of regional hazmat teams, and specifically adding a team in La Crosse County.

### ***Legislative History of the Hazmat Response teams***

1991 Wisconsin Act 104 (date of enactment 12/13/1991; date of publication 1/2/1992)

- Statutorily created the hazardous substance emergency response teams under contract with the State Emergency Response Board (SERB).
- Teams to assist in emergency response to Level A releases within SERB-designated primary response region.
- The SERB may only contract with public organizations (i.e. no private contractor/company).
- No fewer than 7 and no more than 11 Level A teams.
- At least one designated team in each WEM region.
- Team members shall meet the standards of "hazardous materials specialist" under NFPA 471 and 472 as well as 29 CFR 1910.120.
- A member of the team who is acting under the contract is considered a state employee for purposes of worker's compensation benefits.
- Civil liability exemption for team and member of team for good faith acts and omissions in providing services under the contract. This does not apply to criminal conduct.
- Creation of specific appropriations with WDOT to pay for annual payments to the Level A teams and for regional emergency response reimbursement.
- Requires that the SERB establish an Administrative Rule (initially SERB 4) creating a hazardous materials transportation fee for motor carriers transporting hazardous materials within and through the State of Wisconsin.
  - Funds established under the fee are to be collected by a system developed and administered by WDOT.
  - Creates additional FTE positions for WDOT to develop and administer fee collection system.
  - Rule promulgation anticipates collection of no more than \$2.3 M annually.
  - \$1.4 M set aside for teams annually out of program revenue expected for fees collected by WDOT.

- Definitions of “Level A release” and “Level B release” added to the definition portion of Wisconsin’s statutory adoption of the Emergency Planning and Community Right-to-know Act (EPCRA) under 166.20.
- Provides funding for 1.5 FTE for DMA to assist with the hazmat program.

9/23/1993 *American Trucking Associations et al vs. State of Wisconsin et al*, (Dane County Case Number 1993CV003708)

- Lawsuit against the SERB and WDOT by hazmat motor carriers pleading for injunctive relief from Administrative Rule SERB 4.
- Motor carriers refuse to pay fee due to pending litigation so minimal fees are being collected by WDOT which are insufficient to fund Level A teams.
- April/May 1996, SERB 4 is ultimately declared unconstitutional by the WI Court of Appeals for violation of the Commerce Clause of the U.S. Constitution (i.e. flat fee structure).
- WEM proceeds to revised SERB 4 to a tiered fee structure so that it is no longer considered unconstitutional and has an Emergency Administrative Rule about to go into effect. Before the Emergency Rule can be officially published, the State Legislature repeals SERB 4 in its entirety.
- The issue is now moot.

1993 Wisconsin Act 253 (date of enactment 4/9/1994; date of publication 4/22/1994)

- Effective July 1, 1994, eliminates WDOT appropriations for the collection of hazmat fees.
- Creates specific appropriations with DMA to pay for annual payments to the Level A teams with funding moved to the WDOT general fund.
- WDOT FTE positions and funding eliminated.

1995 Wisconsin Act 13 (date of enactment 5/16/1995; date of publication 5/30/1995)

- Creates a specific appropriation with DMA for the emergency response supplement funded with \$500K from the WDOT general fund. This is one-time funding.
- Reduces the number of teams to no more than 9 Level A teams from 11 as the maximum.
- Modernizes language that the SERB may only contract with “public organizations” to local agencies.
- Add sponsoring municipality to the civil liability exemption for good faith acts and omissions in providing services under the contract. This does not apply to criminal conduct.
- Allows the SERB to create an Emergency Administrative Rule to modify SERB 4 without having to provide evidence of the necessity of the preservation of the public peace, health or safety.

1997 Wisconsin Act 27 (date of enactment 10/11/1997; date of publication 10/13/1997)

- Eliminates the SERB effective June 30, 1998.
- Changes all references in the statutes from the SERB to WEM.

- Changes funding source of the specific appropriation with DMA to pay for annual payments to the Level A teams from the WDOT general fund to General Purpose Revenue (GPR).
- Amends team reimbursement for emergency response by WEM only if a team has made a good faith effort to identify the responsible party and that party is unknown, financially unable, or unwilling to pay, subject to available funding under 20.465(3)(dr), Stats.
- Amends the number of teams to no fewer than 7 and no more than 9 Level A teams.
- Requires that WEM must notify the Joint Committee on Finance in writing before entering into a contractual agreement or renewing or extending contracts under the passive review process.
- Effective July 1, 1998, all assets and liabilities of the SERB shall become assets and liabilities of WEM, including all contracts entered into by the SERB.

1997 Wisconsin Act 41 (date of enactment 12/12/1997; date of publication 12/15/1997)

- Reviser's Bill correcting missed reference in the statute under the new passive review process from the SERB to WEM.

1999 Wisconsin Act 9 (date of enactment 10/27/1999; published 10/28/1999)

- Requires that beginning July 1, 2001, WEM shall contract with no more than 9 Level A teams one of which shall be located in LaCrosse County. Note: WEM contracted with LaCrosse one full year before the statutory requirement.

2001 Wisconsin Act 16 (date of enactment 8/30/2001; published 8/31/2001)

- Clarifies statutory language allowing Level A teams to be reimbursed by WEM for emergencies involving a release or a "potential" release of hazardous materials.

2005 Wisconsin Act 33 (date of enactment 8/15/2005; published 8/29/2005)

- Updates and modernizes the training requirements for the Level A team members which requires that they must be trained to the "highest" standards for a hazardous materials "responder" under NFPA 471 and 472 as well as 29 CFR 1910.120. Further, that the teams shall have at least one member that is trained in the appropriate specialty areas under NFPA 472.

### ***Hazmat Response Legislation focusing on the Level A teams***

Currently, Chapter 323.70 of the Wisconsin Statutes provides:

- That the Division of Emergency Management (WEM) contract with no more than 9 regional emergency response teams (Level A), one of which is in La Crosse County.
- At least one designated team in each WEM region.
- The team must be a local agency (i.e. no private contractor/company)
- Team members must be trained to the highest standards for a hazardous materials responder under NFPA 471 and 472 as well as 29 CFR 1910.120. The teams shall

have at least one member that is trained in the appropriate specialty areas under NFPA 472.

- Annual payments to each team from the WEM under the appropriation created in 20.465(3)(dd), Stats.
- Requires a responsible party (i.e. person who possessed or controlled a hazardous substance that was released, potentially released, or who caused the release) to reimburse WEM for emergency response costs incurred by the Level A team. Note: In reality, the teams/sponsoring municipalities collect these costs and only refer problematic claims to WEM.
- Teams will be reimbursed for emergency response by WEM only if a team has made a good faith effort to identify the responsible party and that party is unknown, financially unable, or unwilling to pay, subject to available funding under 20.465(3)(dr), Stats.
- A member of the team who is acting under the contract is considered a state employee for purposes of workers compensation benefits.
- Civil liability exemption for team, sponsoring municipality, and team members for good faith acts and omissions in providing services under the contract. This does not apply to criminal conduct. Note: the civil liability language can be found in section Wis Stat., 895.483.
- WEM must notify the Joint Committee on Finance in writing before entering into a contractual agreement or renewing or extending contracts. Under the passive review process, the Joint Committee on Finance has 14 business days after WEM's notification to schedule a meeting to formally review the proposed action. If no meeting is scheduled within that timeframe, the proposed contracts are approved by the Committee.

After cataloging the legislative requirements that govern the program and speaking with the stakeholders, it appears that all stakeholders are following the legislative requirements. WEM and the teams are meeting the program objectives and following the letter of the law while administering the program.

## II. Data Collection and Analysis

### **A. Collection Process**

In order to get a more complete picture of how the contractual process of the hazmat program works in Wisconsin, the following individuals were interviewed:

- DMA Legal Counsel
- Two past WEM Administrators and the Acting Administrator at the time of the interview
- WEM Hazmat Training Coordinator
- Fire chiefs of the 8 currently designated Level A hazmat teams
- SERB member/contract negotiator

The interviewees provided great insight to the program and offered suggestions of how to revise the current process to best serve all stakeholders and the State of Wisconsin. Interviews were conducted after interviewees completed and returned a written

questionnaire to the researchers. After reviewing the written comments, interviews were conducted. All WEM staff were interviewed over the phone. At the request of the fire chiefs, interviews were conducted face to face with the fire chiefs. The interviews took less than an hour each. See Appendix D for an example of the questionnaire. It was suggested in many interviews that we interview additional individuals that could offer a historical perspective. These names have been added to our interview list for potential contact for input during research for the second report.

In addition to conducting interviews, OJA staff reviewed two prior reports on the program. The 1990 Hazardous Emergency Response Committee (HERC) Report summarized why Wisconsin needs to invest in a regional Hazmat response system. The 2002 Legislative Audit Bureau (LAB) report provided a history of the program to date and offered suggestions on how to change the program to increase efficiency. OJA staff also reviewed the hazmat program files held at DMA. These files include the RFP and the responses to the RFP, although it should be noted that OJA staff only looked at the response of those departments that were chosen to have Level A teams. Lastly, OJA staff read the legislation governing the hazmat program. In total, OJA spent two months collecting data on the program.

## ***B. Data Results***

A large amount of quantitative and qualitative data was collected in preparing this report. Summaries are required to adequately explain the findings, however when possible, charts and statistics are used. There are several appendices attached to the report that contain more detailed information on the topics below.

As noted above, two other studies have discussed hazmat response in Wisconsin; the HERC Report and the LAB audit of 2002. Both the 1990 HERC report and 2002 LAB report provide a good foundation for examining program goals and how the contractual process can be improved. To summarize, both reports state the need for making a determination about how many Level A and B teams are needed, setting standards for teams and their equipment, vehicles and training, and using a funding model for equitable distribution of funds.

Much of the language below is pulled directly from these two reports, in an attempt to be concise and not duplicate prior efforts.

### ***1990 HERC Report***

The HERC report was commissioned by Governor Thompson and the Legislature. A special note is included in the report that reads

“the HERC used a 1978 Task Force Study of Hazardous Materials Response and its subsequent recommendations as a benchmark. The study was chaired by the Division of Emergency Government and the task force was organized by then-acting Governor Martin Schreiber. The make-up of the task force was very similar to the HERC of today. One very important and interesting note is that the HERC has reached similar conclusions independently of the 1978 Task Force. New federal mandates pertaining

to training, equipment, and the formulation of regional response teams are fueling the need for new multi-agency planning and response initiatives” (p.4)

The Executive Summary of the HERC report provides a concise overview of the report and reads as follows: They

“enacted 1989 Wisconsin Act 115 directing the State Emergency Response Board to develop a plan on or before July 1, 1990, under which regional hazardous materials response teams would be established that meet the training requirements of 29 CFR 1910.120(q)(6)(iii) to (u) and 40 CFR 311.1. The SERB created the HERC, made up of state and local emergency management experts and first responders, to conduct an in-depth assessment of existing hazardous materials response capabilities statewide. The HERC was also tasked to recommend a plan for the development and implementation of a program to protect the environment and the health, safety, and welfare of the people in Wisconsin from the threat or potential threat of accidents or incidents involving the releases of hazardous materials.

The HERC recommended that Wisconsin enact legislation that would create a Regional Hazardous Materials Response System utilizing existing local first responder resources. The suggested locations of the regional teams were determined by evaluating transportation routes statewide, Wisconsin’s spill history, the locations of the facilities having the most extremely hazardous substances, the geographical locations of the projected host response team sites, current capabilities of existing hazmat teams response time (window of 1-3 hours), and willingness of projected host regional sites to participate in the response program.

To provide the optimum hazardous materials incident response coverage statewide, the HERC is recommending two options to implement the response program. One option would be to establish 11 regional response teams (heavy teams). Another, which the HERC recommends to be implemented at the earliest possible date, would establish 3 heavy response teams and 6 light teams statewide. The second and equally important part of this option is the creation of statewide hazardous materials incident response standards, a state certification process for all firefighters involved in hazardous materials incident response. Training has long been recognized as fundamental to providing quality services. The training program will assist in establishing, gauging, and maintaining a viable response system statewide. Training funds will be utilized to bring the training levels up to the host Regional Response Teams (RRTs), train the trainers, and assist fire departments statewide in addressing their hazardous materials response training needs. To strengthen Wisconsin’s regional hazardous materials response system, the HERC recommends that state funds be used to cover the cost of the response system. This would include cost of administration, equipment, training, response cost recovery, and liability. Although the HERC makes no recommendation for a specific funding mechanism, the committee does offer suggestions of possible funding alternatives.” (p.1-2)

The report has specific recommendations for team locations, training standards and mechanisms, equipment costs, liability coverage for team members, personnel

compensation, and program administration. For additional information on these topics, please reference Appendix E.

Lastly, the HERC report includes an expectation that does not appear to have been instituted but could be helpful to the program going forward. “The Regional Response program will undergo a comprehensive audit at five-year intervals so that the integrity of the system will continue by keeping pace with changing times and the need to advance with technology.” (p.8)

### ***2002 LAB Audit***

In 2002, the Legislative Audit Bureau (LAB) released a report on the hazmat program. “1999 Wisconsin Act 9 included a non-statutory provision requesting an audit of WEM’s hazmat response activities, including its contracts with the regional teams. Therefore, at the direction of the Joint Legislative Audit Committee, we reviewed:

- ✓ The expenditure of contract funds by the regional teams
- ✓ The number and types of incidents to which regional teams have responded annually
- ✓ Other states’ structures and funding for hazmat response
- ✓ Federal requirements for hazmat response teams
- ✓ The relationship between regional Level A and county-wide Level B teams” (p.7-8)

The LAB researched how funds are allocated, spent and recorded. The following paragraphs explain the report’s conclusions about how teams spent and reported on funds.

“The regional teams have flexibility in determining how to spend their contract funds and are not required by their contracts to spend funds on specific equipment or training. Eligible costs are broadly defined and include, but are not limited to, salaries and wages for team members, tuition and travel for training courses for team members, medical examinations, response vehicles, disposable supplies, and equipment. Even though we found that teams exercise flexibility in their spending priorities, expenditures reported from 1998 to 2000 appear consistent with the purpose of the contracts.” (30-31) “We found that the teams have used their contract funds according to local needs and priorities, with nearly all of the teams reporting that personnel costs accounted for the majority of their expenditures.” (p.27)

“However, determining how the teams use their funding is complicated by several factors. First, team expenditures in a given year often do not match contract payment amounts, because the teams are allowed to carry unused funding into subsequent years. Second, the cities whose fire departments staff the regional response teams operate on a fiscal year that ends on December 31, but contract payments are based on the state fiscal year that ends on June 30. Third, the cities’ accounting systems do not track expenditures by activity and, therefore, cannot accurately report a total for local funds spent on hazmat response.” (p.30-31)

“Although teams reported that the contract funds do not pay for the full cost of maintaining regional teams, and each of the teams reported using local funds for its support, only three were able to provide estimates of local support.” (p.33)

Throughout the LAB report, the auditors identified several issues and suggested possible solutions:

1. Issue Identified: Funding Model & Team Size Standards

“WEM’s funding model (identified on p. 45 of the report) appears both logical and reasonable. However, one weakness is that it provides funding based on the number of personnel each fire department assigns to its team, which is a result of local preferences and labor agreements. This model provides no incentive to limit team membership and appears to lead to the inequitable distribution of funds.”

Suggestion:

“WEM could refine its funding model by determining the minimum number of trained responders required to provide adequate coverage for each region and using this number to calculate how much each team should receive for personnel. Increased standardization of personnel costs would allow WEM to more equitably and efficiently use and allocate available funding.” (p.45)

“WEM may also wish to consider risk information in its future funding decisions. For example, the amount of funding available to each team could be adjusted based on risk indicators that include geographic area and population, frequency of hazardous materials spills, and the number of facilities that are federally required to report hazardous materials usage. WEM may also need to review funding decision based on the frequency and severity of regional team responses to chemical or biological terrorist threats.” (p.46)

2. Issue Identified: Dual Response Structure

“Another factor effecting funding decisions, and which the Legislature may also wish to consider, is the State’s dual hazmat response structure, which divides responsibilities between the regional Level A and county-wide Level B teams. While most hazmat officials would agree that Wisconsin has a well-established response network, in some cases difficulties have been noted in making clear distinctions between incidents requiring Level A and Level B response. This had led to occasional friction between the regional Level A and county-wide Level B teams, including disagreements on how state hazmat funds are allocated.” (p.47)

Suggestion:

“Designating certain Level B teams as assessment teams not only could provide for a quicker response, it could also ensure that regional Level A teams respond only to incidents that require their full capabilities and could limit a regional team’s response costs.” (p.47-49) “Designating Level B teams as assessment teams could also limit response costs.” (p.51)

Two additional suggestions were made about the program in general:

1. Standards:

“We recommend the Division of Emergency Management establish standard rates it will reimburse regional Level A and county-wide Level B teams for their costs in such areas as vehicle usage, consumable supplies, and equipment repair or replacement, as well as for administrative surcharges that may not be directly related to a response effort.” (p.39)

2. Source and Quantity of Funding:

The report suggested that the overall funding levels necessary for the program should be evaluated:

“In light of the new reality of the need for terrorism preparedness, the Legislature may be asked to consider a number of issues relating to the hazmat teams, including assessing the adequacy of overall funding levels or the potential for securing funding sources other than GPR. In addition, some considerations may be necessary to further define the relationships and the respective roles of regional Level A and county-wide Level B teams, and how funds are allocated to them.” (p.41)

As a result of the LAB report, WEM implemented the following changes to the program:

- They began to use the FEMA rates to standardize reimbursement for response by teams.
- They created a response matrix to determine what constitutes a Level A versus Level B response. Appendix F shows the matrix WEM advised teams to use.
- They required that teams report on expenditures as part of the contracts. (See 4.2 in sample contract in Appendix C).

While WEM did make positive changes to the program, there are still some recommendations that have not been consistently implemented:

- Standards for team size have not been established and used as the basis for funding.
- There is not a clearly defined model that shows funding allocation based on risk and other factors.
- Team expenditures are not consistently reported on and tracked.

The 2002 LAB report suggested many of the same ideas proposed in the 1990 HERC report: set standards for training, response capability, equipment and vehicle purchases, discuss the response system, including number of teams needed and level of corresponding response and identify sources for adequate funding.

These ideas are consistent with those offered in interviews we conducted with stakeholders. The interview summaries below shed more light on what specifically could be improved in the contractual process. In addition, many of the stakeholders identify who should be involved in setting standards and increasing communication.

### Interviews

We interviewed 10 fire chiefs, 3 WEM administrators, DMA legal counsel, WEM hazmat training coordinator, and one person that served on the SERB. Below is a broad summation of the interviews with the stakeholders.

### ***Fire Chiefs***

We spoke to the fire chiefs of the current hazmat teams. It should be noted that there has been a fair amount of turnover since the inception of the teams and those interviewed may not have had full historical knowledge of the program. However, all individuals consulted were forthright about the current process and provided candid advice about how the program can be improved to produce a better product for the State of Wisconsin. Appendix G has more complete data on the fire chiefs' interview.

Generally speaking, the fire chiefs said there are not true contract negotiations. They said that WEM presents a contract allocation to the teams and they must accept or decline it. Instead, they would like to see a process where all teams collectively sit down together to negotiate with the WEM representative. Negotiations for allocations should be based on what teams need to meet the set standards. These standards do not currently exist but the fire chiefs said that they should be the ones to set these standards for the teams. Teams reported that their contract funds are kept in a separate hazmat account for their city and that they submit reports to one of several people at WEM, although whom they reported to varied. Eight of the ten chiefs stated that they reported to WEM some data on expenditures; however the type of data, the format, and the submission timelines differed. In addition, some of the data was submitted to DMA and some was submitted to WEM.

The fire chiefs said that there are no standards governing team size or training issues and that there is not an agreed upon allowable expense list. Furthermore, they said they are not notified of passive review. They said they collect data on training, response, equipment depreciation, and personnel rosters and most teams submit that data with budget requests. They also send this data to the WEM hazmat training coordinator on a quarterly basis. All agreed that the Fire Chiefs' Working Group has a role to play in the negotiation and contractual process. There were many suggestions for improvement but the overarching theme was the need for better communications by all stakeholders, including the fire chiefs. Specific recommendations include:

- The fire chiefs should set standards for the teams.
- The funding should be tied to capacity, outcomes, and expectations.
- The hazmat response system needs to be reoriented into the overall statewide response network.
- Contract review should start at least six months in advance, in January, with involvement from the Fire Chiefs' Working Group.

Lastly, many of the chiefs noted that there has been a decline in communication with WEM and DMA legal counsel in the last few years and that they are partially responsible. They asserted that all stakeholders need to do a better job of communicating with each other.

### ***WEM Administrators***

We spoke to three WEM administrators. One administrator served during the period of 1999-2004, and the other served as the acting-administrator from June to September 2009. All interviews were conducted by phone. The acting administrator did not fill out

the questionnaire as he has little knowledge of the program, by his own admission. He discussed the questionnaire with the DMA legal counsel before the phone interview with us. All three administrators offered insight into the program and ways to improve the process.

The WEM administrator during the period 1999-2004 stated that communication between the administrator, the DMA legal counsel, and the hazmat teams was generally good. He pointed out that standards were or should be determined by the fire chiefs, since they are ultimately responsible for teams. During his tenure he set up a funding model to try to create a standard funding mechanism for the teams. He said funding amounts were based on quantifiable criteria and moved away from less defensible, subjective budget allocations. Response data was collected and was used for decision-making. However, other factors entered into the decision-making such as geography and what was needed for response for the inter-state system. Areas for improvement include tracking fiscal expenditures. In fact, he said it would have been a good idea to audit the funds. He asserted there is a need to create a system where everyone knows their role in the process. He noted that one difficulty of administering the program is that there are developments that no one has control over, such as the addition of another team that did not come with additional funding.

The WEM administrator during the period 2004-2009 noted one major drawback is that the Legislature and Governor's administration during his tenure were not interested in addressing the funding issue facing the hazmat program. That left it up to the WEM administrator to make tough funding decisions. Furthermore, "The process does not do justice to the phrase 'contract negotiations.' My understanding is that there has never been any real 'negotiations' since the initial negotiation that decided teams, makeup, and funding levels. Subsequent to those negotiations it was, primarily, discussions on how the teams had outgrown funding and how best to rectify that shortcoming." He had several major suggestions for improvements: there should be one POC for the fire chiefs; the WEM administrator needs authority to make decisions; and the Legislature and Governor need to realize that the program needs money. There should be a cost examination and people need to listen to the fire chiefs about what they need to provide this valuable service for the state. In short, people need to value the program. Without the proper funding, all stakeholders feel helpless to improve the program.

The recent acting-administrator had two key suggestions based on his knowledge of the program. First, he advised creating a formalized, transparent process with strong involvement from several WEM staff, most importantly including the WEM administrator. In addition to the WEM administrator, he suggested that a member of the WEM fiscal staff, the DMA legal counsel and the WEM hazmat training coordinator all take part in the contract process. Secondly, he said that the Fire Chiefs' Working Group should set the standards for the teams.

#### ***WEM Hazmat Coordinator***

We spoke to the WEM hazmat training coordinator who manages the federal Hazardous Materials Emergency Preparedness (HMEP) grant program administered by the U.S.

Department of Transportation. The grant provides funding for hazmat training in the state. In addition to administering the training grants, he collects some data on Level A teams. He has little or no direct involvement in administering the regional hazmat team program.

He said he collects data on response and training from teams on a quarterly basis. Personnel rosters are also updated at least annually and are required to be updated every time there is a change in personnel. He did not believe this information is used during contract negotiations. Appendix H is a sample of the form the coordinator collects on a quarterly basis from each team. Prior to his arrival, this information was collected in paper, instead of electronic format. He noted that response data is also captured in the duty log at WEM.

The training coordinator informed us that there is training money available to all hazmat responders in the state and these funds could be used by Level A teams to help reduce their training budgets in their contracts. He explained that the funds are under-utilized by the Level A teams and they could be used to help offset the costs they must pay for training out of their contract funds. Typically, the money is used up every year, but this year Wisconsin may send some money back to the federal government because the program saw a 70% increase in funds.

#### ***DMA Legal Counsel***

The DMA legal counsel was an integral part of the research process, as she retains all the files on the hazmat program and is the only person who has been with the program since its inception. Her detailed personal knowledge of the program has been important to its implementation. However, she also suggested that additional WEM staff involvement would result in a more effective distribution of workload and sharing of information.

She explained how the process has evolved over time. The process of negotiating the contracts has differed under different Administrators. The extent of communication with the teams, the application of standards and formulas for determining expenses, and the role of the DMA legal counsel in the process have been at the discretion of the administrator and has changed over time. For example, one past administrator developed some cost models for training, supplies, and used it as a basis for an allocation formula, but neither the formula nor the cost models have been reviewed or updated since 2002.

Her answers were consistent with the information of other stakeholders in stating that there is a lack of standards for training, equipment purchases, and team size. Some data is collected and used for process negotiation but it can be difficult to collect from teams, despite specific requirements in the contract language. She is aware of some data collected through the WEM hazmat training program and some of this data is used on occasion. Detailed budget information is not consistently collected, and there is no monitoring of expenditures by WEM after the funding is transferred to the departments, even though submission of expenditure information is required by the contract language. She noted that there is usually one representative of the Fire Chiefs' Working Group that

is notified when passive review occurs. The Fire Chiefs' Working Group plays a minimal role in negotiations.

### ***SERB Board Member***

The SERB board member we spoke to provided insight into how the program was created and what the early intent of program operations were. In addition to his role as a SERB board member, he now is employed at the Department of Natural Resources (DNR) and has knowledge of how the hazmat program works at that agency.

The SERB Board member explained that the first round of contract negotiations was conducted by DMA legal counsel, himself and a representative from each of the teams. He indicated that data was involved in the RFP process and it was the intent that data be used for future funding decisions. He asserted that the contractual process was the best available at the time but noted that contract negotiations did take longer than was desirable when conflict arose.

The interview data provided by all the stakeholders was fairly uniform. While the stakeholders have different responsibilities and interests under the program, most agreed that some change is necessary going forward. They pointed out gaps in efficiency and effectiveness in the contractual process and offered suggestions of how to remedy those problems. There was little difference of opinion on what the course of action should be or who should be involved in what capacity in the contractual process.

### ***C. Data Analysis/Summary***

WEM has administered the program through several changes in legislation and no increase in the funding level since the program began. This has presented challenges that are out of WEM's control. Despite these challenges, it is clear that as the program has evolved, there has been an effort to make it a more formal, consistent process. For example, two-year contracts are now awarded to each team simultaneously and one WEM administrator created a funding model to be used for the contracts. While there has been some improvement in the program, the research indicates there is room for more improvement.

The data from the interviews and previous reports led to identifying three major findings of the hazmat contractual process; a lack of communication, lack of linkage between funding and operations and a lack of transparency in the process. Lastly, it was reported in the interviews that historically there has been a lack of consensus building throughout this program. The data led to the following conclusions:

#### **1. Communication**

There are gaps in communication between the Level A regional hazmat response program and the hazmat training program administered by WEM. This has resulted in data being collected by one program but not used by the other and training opportunities that are available in one program not being fully utilized by the other.

This communication gap is the result of roles not being clearly defined. This has led to confusion about who is responsible for what part of the hazmat team contractual process. Roles and specific responsibilities have also changed over time, depending on who the WEM administrator is. This lack of definition is problematic internally and externally, since teams are not always sure who the WEM representative is in relation to teams.

Additionally, there is confusion about what data is collected from teams and how it is collected. As a result, the data is not being analyzed to make decisions regarding contract negotiations. There is ambiguity regarding coordination of county and regional teams for the administrative agency. There appears to be inconsistent interaction between the three positions at the administrative agency that have some role in administering the hazmat program. This lack of coordination involves confusion about who works with hazmat chiefs, who works with hazmat coordinators, and what resources are available to the county and regional hazmat teams. Most recently, there appears to have been little direct involvement in the program administration by WEM staff on a regular basis.

## **2. Funding**

Data analysis does not appear to be driving the funding, nor are there standards for the data and expectations of what it should be used for. More significantly, the correlation between funding and the importance of the data collected is not understood by everyone. Some data is collected by teams and by the administrative agency but it is not reported and tracked consistently, nor is it used for decision making in a way that everyone understands. The interviews made it clear that there is data available for use but there is not a mechanism in place to capture all of it and use it.

Since the program's inception, the funding has operated in a fractured system, where the needs of each individual team are driving the process. Negotiations and funding are allocated on a single team basis and, as a result, changes to funding are also done on a single team basis. A review of the history of the program shows the disjointed nature of the initial contract and that it took seven years and several rounds of contracts to get to a point where all the contracts are awarded at the same time. However, it appears that the funding allocations and any related discussions still take place in an informal way between WEM and single teams.

The \$1.4 million annual allocation for the teams was a number determined by legislation. Since the inception of the program, there has not been a review of the overall funding needs of the regional hazmat response capability. The funding level has not increased since the program began and what funding there is has not been allocated using a clear formal model. This has led to contention and it was reported, during interviews with numerous stakeholders, that some teams have at times threatened to pull-out of the regional system due to funding allocations and that teams have been presented with "take it or leave it" contracts.

## **3. Transparency**

The criteria for measuring need and the process for allocating funding is not clearly understood by all stakeholders. While there is historical data that indicates that a selection process identified which departments would serve as a team, there does not appear to be a defined process that has been communicated to teams regarding how funds are allocated for each contract. There is no evidence that all stakeholders are aware of funding criteria and how decisions are made relating to changes in funding.

There appears to be a lack of communication between the administrative agency and the teams in the following areas: written detailed communications regarding policies, participation in hazmat meetings by the administrative agency, and reliance on discussions between one representative for the administrative agency and one representative for the teams (which changes with time). It seems that this over-reliance on informal conversations has led to information not being disseminated to all teams and staff at WEM. Interviewees pointed out that communication is a key factor in how the process works and that the level of communication between WEM and the teams has varied over time.

The inconsistency in communication is partly caused by the fact that the roles and responsibilities of the two stakeholder groups, the Fire Chiefs' Working Group and the Hazmat Coordinators Working Group are not defined in the contract process. In addition, the relationship between the working groups with respect to collecting information, communicating with WEM, and making decisions is unclear.

The problems related to communication are evident in the contractual procedure, including the negotiation and approval process. Contract negotiation process is not understood by all parties. The passive review process used to approve the contracts by the legislature is another area that is not transparent to the stakeholders. The contractual process has changed over time, including the addition of passive review, and the lack of continuity and clarity in the process has left all stakeholders disconnected. A lack of communication has created an atmosphere where unclear expectations seem to exist between the teams and administrative agency.

### III. Recommendations

After reviewing all the data, the Hazmat Working Group concluded that the following seven recommendations will improve the process of contract and fiscal for Wisconsin's hazmat teams. Some of the recommendations will serve a two-fold function; they will improve the contractual process and can be a starting point for future possible improvements to the structure of the hazmat response system in Wisconsin.

Some of the recommendations below will most appropriately be implemented through the Phase II study, which will establish a working group of stakeholders to assess the substantive needs of the program. However, work should begin on implementation of the below recommendations prior to beginning the Phase II study. Accumulating the necessary data now and implementing new processes will help drive Phase II of the

study, which will fully engage all stakeholders in discussing the best way to structure hazmat response in Wisconsin.

### **1. Define DMA/WEM staff role and assign program to a single WEM point of contact.**

We recommend that a team of WEM staff work to administer the hazmat program but that there be one point of contact. Establishing a single point of contact will ensure that all information is collected and routed through one source, and the day-to-day responsibilities for program coordination will clearly rest with that individual. It is also important for this position, whether it is an existing position or a new position, to fit within the existing WEM organizational structure with clear lines of responsibility and authority. Recognizing that creation of a new position would be difficult under current budgets, the hazmat training coordinator appears to be the most appropriate choice for this role within the current WEM organization. See Appendix I for the WEM Organizational Chart. The hazmat coordinator currently runs the hazmat training program, works with hazmat team coordinators, and collects much of the data necessary for the administration of the program.

As point of contact (POC) for the Level A response program this position should:

- Report to the planning and preparedness Bureau Director through the Training Section Supervisor. This position fits within the existing organizational structure at WEM.
- Implement the hazmat program and serve as the daily point of contact for the hazmat team coordinators.
- Collect data on a quarterly basis.
- Approve data reports and requests for reimbursement. Work with fiscal staff to send/coordinate payments to teams.
- Attend the Hazmat Coordinators' Working Group meetings to discuss issues.
- Update WEM website with hazmat information.
- Publish guidance for program.

Additionally, WEM fiscal staff should be involved in the fiscal administration of the program. This person should be responsible for:

- Making payments to the teams.
- Keeping the single official file for each contract for each team.
- Work with the program POC to ensure coordination of fiscal and programmatic requirements.
- Assist in the development of program and fiscal guidance.

The Planning and Preparedness Bureau Director should:

- Supervise the Hazmat Training Coordinator's program implementation through the Training Section Supervisor.
- Attend the quarterly Fire Chiefs' Working Group meetings.
- Resolve issues with the fire chiefs, as they arise.
- Keep the WEM Administrator informed about the program.

The WEM Administrator:

- Supervise the Planning and Preparedness Bureau Director.
- Coordinate the effort between WEM staff and the DMA Legal Counsel to review legality of contracts.

It is essential that the WEM Administrator have direct involvement in the initial development of these process changes, and involvement on an as-needed basis in the future, with responsibility delegated to the Bureau Director and Hazmat Training Coordinator.

DMA Legal Counsel also has a role in the contractual process. This position should:

- Draft and review contract language.
- Ensure compliance with legislation.
- Oversee passive review process.
- Draft any changes to legislation governing the program.
- Review program and fiscal guidance for legislative compliance.

With four people at WEM and the DMA legal counsel all involved, there must be clear division of roles, lines of authority, and open communication to administer the program. The hazmat program team should meet periodically throughout the year and particularly during the contract negotiation process to ensure consistency of internal program policies, procedures, and communications with stakeholders.

Furthermore, in order to facilitate communications between WEM and the fire chiefs, we suggest that WEM administer a hazmat webpage on the WEM website. This site should host the program guidance and forms and other relevant details, such as the NFPA standards for the program. This will add transparency to the process.

WEM could begin to implement this recommendation immediately, with full implementation, including a necessary revision to work assignments, position duties, and meeting schedules, within 2-4 weeks.

## **2. Define the roles of the stakeholder working groups.**

Currently, there are two working groups for the fire service that deal with Level A hazmat response; a Fire Chiefs' Working Group and a Hazmat Coordinators' Working Group. It was unclear from discussion what the role of each group is and how they interact with each other and with WEM.

- With stakeholder involvement, the fire chiefs' roles and responsibilities and their interactions with WEM need to be clearly defined. These should be outlined in a written format and reviewed on an annual basis.
- With stakeholder involvement, the hazmat coordinators' roles and responsibilities and their interactions with WEM need to be clearly defined. These should be outlined in a written format and reviewed on an annual basis.
- WEM and both working groups need to meet on a regular basis to facilitate communication.
- Clear points of contact need to be designated for WEM and the working groups to establish transparency and accountability.

It is important to note that these working groups should include WEM in discussions they have, at the appropriate time. WEM should be invited to meetings and kept up to date on decisions made by the Fire Chiefs' Working Group. More open communication from the fire chiefs to WEM will be a benefit to all.

It is feasible for this recommendation to be implemented in a short timeframe. The written document outlining roles and responsibilities of the Fire Chiefs Working Group and the Hazmat Coordinators' Working Group could be drafted within two months. Points of contact for the fire chiefs and WEM could be designated immediately.

### **3. Establish standards for team size, equipment, training and data collection.**

As reported in interviews, there are not standards as they relate to all facets of the teams. All agreed that standards are necessary for the integrity of the system. WEM should define standards with input from the stakeholder working groups. These standards are needed in order to develop statewide capability focus, as opposed to an individual department focus.

- Utilizing a collaborative effort the stakeholders should define the common terminology they use.
- Stakeholders must set standards and agree upon a justification for team size.
- Standardization of equipment should be a priority.
- Explore options for cost effective training.
- Data collection is critical to the contractual process. The working groups and WEM need to determine what data needs to be collected (risk, response, etc) and what that data will mean for funding decisions.
- WEM should publish an authorized equipment list once standards are set.
- WEM, in cooperation with the Fire Chiefs' Working Group, should establish a validation mechanism to document team competencies.

It is feasible for the necessary conversations and justifications to occur immediately. However, the Phase II study will examine these issues outside of the current structure.

### **4. Establish funding formula model based on data collected and standards set for the teams.**

It is vital that decisions related to the hazmat program be made on mutually agreed upon criteria between the administering agency and the teams. This will assure accountability and effective program management as well as provide a basis for clearly understood decision making process.

- WEM, as the administrative agency, should coordinate with the fire departments a process that establishes a formula model for the distribution of the contract funds.
- The formula models need to be based upon a clear understanding of mutually agreed upon factors that include but are not limited to risk, need criteria, and consistent data evaluation.

It is feasible for this recommendation to be implemented before the next round of contractual negotiations.

## **5. Establish process for data collection, reporting and tracking.**

Several types of data should be collected in order to allow for evaluation of the teams and the response system as a whole. At a minimum, WEM should collect team information such as rosters and expenditure data including training and equipment purchases. This ensures accountability and effective program management.

Data should be collected in a formal and orderly process.

- WEM should create a process for collecting the mutually agreed upon data and publish this in a guide. The guide should indicate who the data should be submitted to and when. Furthermore, there should be electronic forms for each of the teams to fill out so that each team is using a standard reporting mechanism. This will allow for accurate data collection and reporting and fair comparison during evaluations. It is critical that the guide outline the consequences for non-compliance with the reporting requirements. Contract payments should be tied to reporting. Regular reporting should be required and the teams reimbursed upon WEM receipt of reports.
- WEM should create an internal process for managing the data. The data should be kept on file (as submitted electronically by teams) and then entered into a database. This process should be managed by the hazmat program POC. Fiscal data should be shared with the appropriate WEM fiscal specialist. The teams should have one point of contact. The WEM hazmat POC must be responsible for sharing information internally by notifying fiscal staff of when to make payment to teams.
- WEM should institute a way for distributing the data with the teams. This will help facilitate discussion on program needs and drive decision-making. As noted in recommendation number one, this type of information should be shared on an electronic venue that is accessible to WEM and the fire chiefs. The guide should also be posted to a designated spot.
- This data must be reviewed with the Fire Chiefs' Working Group, the Hazmat Coordinators' Working Group, and WEM on an annual basis.

WEM should begin implementing this recommendation immediately, with partial completion of reporting guidelines, forms, databases, and sharing processes, achievable within 3 months. These will be further enhanced in Phase II of the study.

## **6. Engage stakeholder working group in contract process and formalize communications**

Contract negotiations should be formal and transparent.

- WEM, in cooperation with the Fire Chiefs' Working Group, should draft a formal communications plan.
- As recommended by the fire chiefs, the administrating agency should include the Fire Chiefs' Working Group in contract discussions. This will ensure that there is one clear message being communicated to all stakeholders.
- These discussions should occur at scheduled times, as required by a defined time table, which should be detailed in the program guide.
- The contract negotiations should begin at least six months in advance of the current contract expiring.
- The passive review process needs to be open and transparent, take place on a set schedule and WEM and the fire chiefs need to be co-partners in this process.

It is feasible for a timetable to be published immediately. Additionally, contract negotiations for the next contract should begin by January 2011.

#### **7. Publish formal contract guidance with a timeline and specific requirements**

- WEM should publish one guide that covers all aspects of how the Level A regional hazmat response system works. This guide on program implementation will create transparency and ensure a minimum level of communication between WEM and the teams.
- The guide should include sections on standards, the allocation formula model, data reporting, contract guidance and requirements, contract review schedule and the passive review process. This guide should be posted to an electronic venue that WEM and the fire chiefs have access to and should be sent out to the teams.
- In the event of changes to the guide, clear communications between all stakeholders need to take place.
- Teams will be responsible for complying with the program guidelines outlined in the document.

It is feasible to implement this recommendation immediately. However, it is likely that there will be revisions to the guide after Phase II of the study is completed.

### **IV. Conclusion**

This report is part one of a two-part study into Wisconsin's hazmat program. The recommendations are respectfully submitted to The Adjutant General, Wisconsin Emergency Management and the Hazmat Study Working Group for their consideration. The second part of the report will cover research and recommendations related to making substantive changes to the regional hazmat response system. That report will be published in May 2010.

The researchers note that two previous reports offering recommendations consistent with this report appear to have had little impact on the operation of this program. Successful implementation of these recommendations will require sustained effort and leadership by DMA, WEM and the Fire Chiefs' Working Group. This endeavor needs to be measureable and tracked in a manner that documents positive achievements. Absent the improvements suggested by this report, it will be difficult to position the hazmat program to continue to obtain sufficient state funding to sustain and expand its capabilities in the future.

The second study, however, may define a structure that has the possibility to change the process recommendations made here. The basic tenets of increasing transparency and communications and resolving funding issues need to be incorporated into whatever system may be identified as the hazmat response model for Wisconsin moves forward.

## **Appendix A: Acronyms**

DMA- Department of Military Affairs  
DNR- Department of Natural Resources  
EPCRA- Emergency Planning & Community Right-to-Know Act  
FEMA- Federal Emergency Management Agency  
FTE- Full Time Equivalent  
GPR- General Purpose Revenue  
Hazmat- Hazardous Materials  
HERC- Hazmat Emergency Response Committee  
HMEP- Hazardous Materials Emergency Preparedness  
LAB- Legislative Audit Bureau  
NFPA- National Fire Protection Association  
OJA- Office of Justice Assistance  
OSHA- Occupational Safety and Health Administration  
POC- Point of Contact  
RFP- Request for Proposal  
RRT- Regional Response Team  
SERB- State Emergency Response Board  
TAG- The Adjunct General  
WDOT- Wisconsin Department of Transportation  
WEM- Wisconsin Emergency Management

### Appendix B: Chart of Team Contracts

Team	FY93/94	FY94/95	FY95/96	FY96/97	FY97/98	FY98/99	FY99/2000	FY00/01	FY01/02	FY02/03	FY03/04	FY04/05	FY05/06	FY06/07	FY07/08	FY08/09	FY09/10	FY10/11
<b>Appleton/Green Bay</b> Initial Contract 12/21/1994		\$103,325	\$155,000	\$220,000	\$170,000	\$100,000	\$110,000											
<b>Appleton/Oshkosh</b> Initial Contract 7/1/2000								\$169,700	\$169,700	\$198,202	\$198,202	\$198,202	\$198,202	\$198,202	\$198,202	\$198,202	\$196,228	\$196,228
<b>Eau Claire/Chippewa Falls</b> Initial Contract 2/22/1996			\$197,135	\$150,000	\$181,190	\$221,675	\$250,000	\$164,800	\$164,800	\$180,069	\$180,069	\$180,069	\$180,069	\$180,069	\$180,069	\$180,069	\$178,263	\$178,263
<b>La Crosse</b> Initial Contract 7/1/2000								\$202,600	\$202,600	\$119,727	\$119,727	\$119,727	\$119,727	\$119,727	\$119,727	\$119,727	\$118,523	\$118,523
<b>Madison</b> Initial Contract 6/8/1995			\$200,000	\$200,000	\$225,000	\$300,000	\$300,000	\$194,400	\$194,400	\$196,432	\$196,432	\$196,432	\$196,432	\$196,432	\$196,432	\$196,432	\$214,472	\$214,472
<b>Milwaukee</b> Initial Contract 2/12/1995		\$150,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$270,350	\$279,850	\$285,943	\$285,943	\$285,943	\$285,943	\$285,943	\$285,943	\$285,493	\$303,087	\$303,087
<b>Oshkosh/Manitowoc/Sheboygan</b> Initial Contract 8/2/1994		\$220,000	\$200,000	\$180,000	\$150,000	\$150,000	\$124,039											
<b>Racine</b> Initial Contract 7/7/1995			\$175,000	\$200,000	\$200,000	\$275,000	\$185,000	\$119,500	\$119,500	\$122,500	\$122,500	\$122,500	\$122,500	\$122,500	\$122,500	\$122,500	\$121,268	\$121,268
<b>Superior</b> Initial Contract 10/18/1993	\$243,300	\$195,900	\$150,000	\$150,000	\$150,000	\$200,000	\$178,000	\$149,448	\$149,448	\$150,325	\$150,325	\$150,325	\$150,325	\$150,325	\$150,325	\$150,325	\$148,827	\$148,827
<b>Wausau</b> Initial Contract 10/19/1995		\$730,775	\$22,865	\$0	\$23,810	\$127,473	\$130,301	\$129,202	\$129,202	\$146,802	\$146,802	\$146,802	\$146,802	\$146,802	\$146,802	\$146,802	\$105,332	\$105,332
<b>Total</b>	\$243,300	\$1,400,000	\$1,400,000	\$1,400,000	\$1,400,000	\$1,674,148	\$1,577,340	\$1,400,000	\$1,409,500	\$1,400,000	\$1,400,000	\$1,400,000	\$1,400,000	\$1,400,000	\$1,400,000	\$1,399,550	\$1,386,000	\$1,386,000

Note: For FY01/02, the Joint Committee on Finance approved an additional \$9,500 over and above the \$1.4 million base amount in appropriation 20.465(3)(dd) for the City of Milwaukee. The additional funding came from the Emergency Response Equipment appropriation under 20.4765(3)(dp) Stats.

Note: In the 2009-2011 Executive Budget submitted by the Governor in 2009 AB 76, there was a \$14,000 reduction in the base amount for the appropriation under 20.465(3)(dd) Stats.

**Appendix C: Sample of Current Contract**



**EXTENDED  
CONTRACT FOR  
REGIONAL HAZARDOUS MATERIALS  
RESPONSE TEAM SERVICES**

**JULY 1, 2009 THROUGH JUNE 30, 2011**

Between

**STATE OF WISCONSIN  
DEPARTMENT OF MILITARY AFFAIRS  
DIVISION OF EMERGENCY MANAGEMENT**

And

**CITY OF \_\_\_\_\_, WISCONSIN**

DATE: June 30, 2009

**EXTENDED  
CONTRACT FOR REGIONAL HAZARDOUS MATERIALS  
RESPONSE TEAM SERVICES**

**1.0 General Contract Information**

1.1 **Parties:** This extended contract is between the State of Wisconsin, Department of Military Affairs, Division of Emergency Management (hereinafter "Division") and the \_\_\_\_\_ Fire Department, City of \_\_\_\_\_, Wisconsin (hereinafter "Contractor") for the provision of regional hazardous materials response team services as described herein and authorized under 1991 Wisconsin Act 104, as codified in §166.215 of the Wisconsin Statutes and as further amended.

1.2 **Recitals:** WHEREAS, in order to protect life and property against the dangers of emergencies involving hazardous materials, the Division may assign and make available for use in any county, city or district, a regional hazardous materials response team.

WHEREAS, the Division desires to enter into this Agreement to establish Contractor as a Regional Hazardous Materials Response Team, and Contractor desires to be so designated and to enter into this Agreement.

HOWEVER, the parties expressly recognize and attest by this Agreement that neither party intends to create or to assume fiduciary responsibilities to provide for the containment, cleanup, repair, restoration and investigation of the environment (air, land and water) in a Hazardous Substance Incident, which named responsibilities are and shall remain the sole obligations of the Wisconsin Department of Natural Resources under §§292.11 and 166.20(4), Wis. Stats.

1.3 **Contract Term:** This extended Agreement shall continue from the date indicated on the notice of intent to award and shall be extended for an additional two years commencing July 1, 2009 through June 30, 2011.

**2.0 Definitions**

2.1 **Definitions:** The following definitions are used throughout this Agreement:

Agreement means this extended Contract, together with the Notice of Intent to Award, Exhibits and Addenda. Exhibits and Addenda include the following:

Exhibit A	Request for Proposal and Addenda
Exhibit B	City of _____ Fire Department Proposal
Exhibit C	Notice of Intent to Award and Designation Letter
Exhibit D	Primary Response Area
Exhibit E	Two-year Budget

State means the State of Wisconsin.

Department means the State of Wisconsin, Department of Military Affairs.

Division means the Division of Emergency Management.

Regional Team means one of the eight (8) fire departments chosen by the Division to provide regional Level A hazardous materials response that meets the standards under 29 CFR 1910.120(q)(6)(iv), as further amended. Under §166.215(1), Stats., the Division may only contract with public organizations.

Contractor means the City of \_\_\_\_\_ Fire Department, City of \_\_\_\_\_, Wisconsin by which service or services will be performed under this Agreement.

Emergency means a situation which presents an imminent risk to public health, safety and/or the environment.

Level A Release means a release that meets the specifications under §166.20(1)(ge) of the Wisconsin Statutes.

Incident means any actual or imminent threat of release, rupture, fire or accident that results, or has the potential to result, in the loss or escape of a hazardous material into the environment.

Local Government Agency means a city, county, district or subdivision thereof.

Primary Response Area means the geographical region where the Contractor is principally responsible for providing regional hazardous response team services.

Regional Hazardous Materials Response Team means the Contractor and/or designated employees of the Contractor who are expected to respond to, control, and/or stabilize the actual or potential emergency release(s) of hazardous substances.

Responsible Party means the person(s), as defined in 42 U.S.C. §9606 and §9607, who possessed or controlled a hazardous substance which was discharged or who caused the discharge of a hazardous substance or who caused a potential release of a hazardous substance which caused the emergency to which Contractor has responded.

### **3.0 Statement of Work**

- 3.1 **Services to be provided by Contractor:** During the term of this Agreement, the Contractor agrees to provide regional hazardous response team services within the boundaries of Contractor's assigned Primary Response Area as described in Exhibit D, attached hereto and incorporated by reference herein.

Contractor's response activities under this Agreement shall be limited to emergency operations, reporting and documentation of activities arising from hazardous materials releases/incidents which threaten life, property and/or the environment. Contractor shall not provide under this Agreement any services with respect to the sampling, testing, analysis, treatment, removal, remediation, recovery, packaging, monitoring, transportation, movement of hazardous materials, cleanup, storage and disposal of hazardous materials except as these may be reasonably necessary and incidental to preventing a release or threat of release of a hazardous material or in stabilizing the emergency response incident, as determined by the Contractor.

Contractor shall establish safety perimeters at or near sites and vessels. Contractor shall not be required to locate underground utilities, insure appropriate traffic control services, conduct hydrological investigations and analysis, or provide testing, removal and disposal of underground storage tanks at or near the emergency response incident to which the Contractor is dispatched.

The Division and Contractor make no representations to third parties with regard to the ultimate outcome of the hazardous materials services to be provided, but Contractor shall respond to the best of its abilities, subject to the terms of this Agreement.

- 3.2 **Performance Conditions:** Contractor acknowledges that prior to undertaking any emergency response activity under this Agreement, Contractor shall receive written approval from the Division to proceed with response activities. Division approval shall be conditioned upon the Contractor demonstrating to the Division that its employees, equipment, and vehicles meet or exceed applicable regulatory requirements.
- 3.3 **Personnel:** Contractor shall provide an adequate number of trained, medically monitored, competent, and supervised personnel as established by Contractor and as is reasonably necessary to operate within the safety levels of a regional hazardous materials response team.
- 3.4 **Vehicles and Equipment:** Contractor shall limit its activities to that which can be safely accomplished within the technical limitations of the available vehicles and equipment. Contractor may use Level A equipment and vehicles for Contractor's local use, however, Contractor agrees that in the event of multiple responses, said equipment which is already not committed to a prior response shall be used on a priority basis to respond to a Level A release.
- 3.5 **Vehicle and Equipment Use Limitations:** This Agreement in no way limits the Contractor from responding with Level A vehicles, equipment and supplies under local authority, mutual-aid Agreements, or other contracts under local authority.
- 3.6 **Response Procedures and Limitations:** Contractor recognizes that its obligations under this Agreement are paramount to the State of Wisconsin. Contractor agrees that if local fire response obligations in Contractor's own jurisdiction create limits or unavailable resources within the Primary Response Area, Contractor will seek aid from local jurisdictions to assist in local fire response obligations in Contractor's own jurisdiction.

Contractor's obligation to provide services hereunder shall arise, with respect to specific response actions, upon receipt of an emergency response request pursuant to Standard Operating Guidelines provided in Subsection 3.8 herein.

- 3.7 **Right of Refusal:** If, on occasion, a response under this Agreement would temporarily place a verifiable undue burden on the Contractor because Contractor's resources are otherwise inadequate or unavailable and mutual aid is unavailable for a level A response

within Contractor's Primary Response Area, then if notice has been provided to the Division, the Contractor may decline a request for regional emergency hazardous material response.

- 3.8 **Standard Operating Guidelines:** Contractor and Division agree that regional response team operations will be conducted in accordance with Standard Operating Guidelines and "Call Out Procedure" that will be mutually approved by the parties to this Agreement.

#### 4.0 Contractor Subsidy and Reimbursement

There are two types of Contractor costs under this Agreement: (1) Standby Costs, and (2) Team Response Costs. Each of these are discussed more fully below.

- 4.1 **Standby Costs:** As provided under §166.215(1) of the Wisconsin Statutes, Contractor will be subsidized annually, commencing fiscal year 2007/08, under this Agreement for its approved standby costs as described in "Exhibit E", attached hereto and incorporated by reference herein. Said payments to regional emergency response teams for standby costs shall be made from the appropriation account under §20.465(3)(dd) of the Wisconsin Statutes. Such standby costs include, but are not limited to:

(1) Specialized Training Expenses: The Division shall, subject to available funding, provide advanced training and education to Contractor's employees. Requests for such training must be approved by the Division in advance.

All such other training must comply with the governmental regulations associated with assigned duties under this Agreement. Such costs may include training, personnel costs, and per diem/travel expenses in accordance with the State rates. Where the Contractor demonstrates that its employees already meet or exceed Division-approved standards, then the allocated training funds shall be authorized for transfer within the Contractor's account.

(2) Medical Surveillance: Contractor shall provide Baseline, Maintenance and Exit Physicals for each regional hazardous material response team member.

(3) Response Vehicle(s) and Equipment Purchases: Standby costs provide for necessary equipment and supply purchases of Level A vehicle(s), supplies and equipment by Contractor. Where Contractor has obtained the required equipment contained on the Division-approved minimum required equipment list, allocated funds may be authorized for transfer within the Contractor's account. Title to any equipment purchased or fabricated pursuant to this Agreement shall be vested in Contractor. Such title shall be vested in the Contractor upon acquisition of the equipment or as soon as feasible thereafter.

The Division and Contractor acknowledge and agree that a primary project goal of the regional hazardous materials response team is to standardize Level A vehicles and equipment on a statewide basis.

4.2 **Standby Cost Expenditures:** It is the intent of the Division that funds allocated under Subsection 4.1 of this Agreement shall supplement existing, budgeted moneys of the Contractor to provide the services specified herein and may not be used to replace, decrease or release for alternative purposes the existing, budgeted moneys of or provided to the Contractor.

Further, the Division intends that funds allocated under Subsection 4.1 of this Agreement shall not be used by the local government agency to supplement, offset, replace, decrease or release any budgetary obligations for other municipal departments not directly connected or attached to Contractor.

Contractor shall submit to the Division, on an annual basis, an itemized list documenting expenditures made with standby funding. Said documentation shall be mailed by Contractor to the WEM Administrator at the address noted in Subsection 7.17 herein.

4.3 **Team Response Costs and Reimbursement:** Pursuant to §166.215(2) of the Wisconsin Statutes, Contractor shall be reimbursed for reasonable and necessary team response costs incurred in responding to a Level A release under this Agreement. Such team response costs may include, but are not limited to:

(1) Reimbursement for use of Vehicle(s) and Apparatus: Contractor shall be reimbursed for the approved use of its vehicles and equipment at the rates provided in "Exhibit B" to this Agreement.

(2) Personnel Expenses: Contractor's team response personnel expenses which are approved and authorized under this Agreement are reimbursable at the rates described in "Exhibit B". Team response personnel expenses shall be billed to the nearest one-fourth (1/4) hour work period. Personnel expenses may reflect replacement personnel costs and indirect charges/costs for wage, fringe, death and duty disability retirement benefits.

(3) Emergency Expenses: Contractor's necessary and reasonable emergency expenses related to services rendered under this Agreement are reimbursable. All such expenses must be based on actual expenditures and fully documented by the Contractor. The Division reserves the right to deny any reimbursement of unjustifiable Contractor expenditures.

Pursuant to §166.215(2) Wis. Stats., Contractor shall be reimbursed by the Division for its necessary and reasonable emergency response costs and expenses related to services rendered under this Agreement.

Such reimbursable team response costs shall be limited to amounts collected by the Division pursuant to §166.215(3), Wis. Stats. and, under certain conditions, pursuant to the amounts appropriated under §20.465(3)(dr), Stats. Contractor shall be reimbursed by the Division in accordance with Subsections 4.4 and 4.6 herein.

- 4.4 **Direct Collection of Team Response Costs by Contractor:** In addition to Division reimbursement addressed in Subsections 4.2 herein, Contractor may elect to collect team response costs directly from the Responsible Party(s) and/or seek reimbursement for local agency response pursuant to §166.22 of the Wisconsin Statutes.
- 4.5 **Where No Responsible Party Can Be Identified or the Responsible Party is Unable to Pay Team Response Costs:** As previously mentioned in Subsection 4.2 and upon the election of Contractor, the Division shall bill the party(s) responsible for causing the hazardous materials emergency for total emergency response costs. Where there is no identifiable Responsible Party, or if the Responsible Party is unable to pay, the Division agrees to reimburse Contractor's Team response costs from the emergency response supplement created under §20.465(3)(dr), Stats., only if the regional emergency response team has made a good faith effort to identify the person responsible under §166.215(3), Stats., and that person cannot be identified, or, if that person is identified, the team has received reimbursement from that person to the extent that the person is financially able or has determined that the person does not have adequate money or other resources to reimburse the regional emergency response team. To seek Division reimbursement from the emergency response supplement created under §20.465(3)(dr), Stats., Contractor must comply with all Division-approved reimbursement procedures and/or duly enacted Administrative Rule(s) as well as the billing system requirements provided under Subsection 4.6 herein.
- 4.6 **Maximum Contract Subsidy:** This Agreement shall have a maximum contract subsidy of \$\_\_\_\_\_ per annum for stand-by costs as described in "Exhibit E" to this Agreement. The Division certifies that sufficient funds are available and authorized within the Division's current appropriation or limitation. The maximum contract subsidy does not, however, include Contractor's team response costs as specified in Subsection 4.3 of this Agreement.

No additional Contractor subsidy or reimbursement shall be paid or any additional demands placed on Contractor under this Agreement unless otherwise specifically agreed to by the Division and the Contractor, and upon written amendment to this Agreement. The Division's reimbursement(s) shall be full payment for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work authorized under this Agreement. Acceptance of payment by the Contractor shall operate as a release of the Division of all claims by Contractor for reimbursement of team response costs except where partial payment has been made due to limitations of the Division funds under §166.215(2), the amounts appropriated under §20.465(3)(dr) and subject to further payment as set forth above.

- 4.7 **Billing System for Division Reimbursement of Team Response Costs:** Contractor will provide an estimate of team response costs to the Division within ten (10) working days of the response. If the Contractor seeks Division reimbursement under §166.215(2), or from the emergency response supplement created under §20.465(3)(dr), Wis. Stats., Contractor shall file a Notice of Intent with the Division for response costs within thirty (30) days of the response. The Division will not bill responsible parties or reimburse Contractor from the emergency response supplement created under §20.465(3)(dr), Stats., unless it receives an

invoice from the Contractor. Contractor's claim for reimbursement shall contain such documentation as is necessary to support the Division's cost-recovery operations and financial audits. The Division agrees to bill responsible parties for team response costs and may bill for the total emergency response costs. Team response costs include such items as vehicle and equipment use, expendables and personnel costs. In addition, team administrative costs may be billed as part of the emergency costs.

The Division shall bill identified Responsible Party(s) within thirty (30) days of receipt of Contractor's invoice. Contractor's team response costs shall be collected by the Division from the Responsible Party(s) before payment is made to the Contractor. Thereafter, if the Division successfully recovers payment from the Responsible Party(s) it shall first be used to pay the Contractor's team response costs, if these have not been paid in their entirety, then applied to the Division's administrative costs. Any remaining funds will be used to pay emergency response costs as billed. Contractor agrees to cooperate with the Division as is reasonable and necessary in order to allow the Division to bill third parties and pursue cost recovery actions.

If a disputed billing is resolved in favor of the responsible party(s), then the Contractor shall not be required to reimburse the Division for payments previously made.

Where there is no identifiable Responsible Party, or if the Responsible party is unable to pay, the Division agrees to reimburse the Contractor's team response costs from the emergency response supplement created under §20.465(3)(dr), Stats., within thirty (30) days of receipt of Contractor's invoice and complete documentation. Contractor's claim for reimbursement from the emergency response supplement created under §20.465(3)(dr), Stats., shall contain such documentation as is necessary to support the Contractor's good faith effort to identify the Responsible party or to collect response costs from a Responsible Party(s) that is unable to pay. Further, Contractor shall comply with all Division-approved reimbursement procedures and/or duly enacted Administrative Rule(s).

- 4.8 **Approval:** Contractor, when acting under this Agreement, may not respond without following the Division-approved "Call Out Procedure". Granting of response approval by the Division of Emergency Management's Duty Officer constitutes the Division's agreement to pay Contractor's team response costs under §166.215(2), Wis. Stats. Contractor agrees to make reasonable and good faith efforts to minimize Responsible Party and/or Division expenses.
- 4.9 **Retirement System Status and Tax Payments:** Contractor and its employees are not entitled under this Agreement to Division contribution for any Public Employees Retirement Withholding System benefit(s). Contractor shall be responsible for payment/withholding of any applicable federal, Social Security and State taxes.
- 4.10 **Worker's Compensation:** A member of a regional hazardous materials response team who is acting under the scope of this Agreement is an employee of the State for purposes of Worker's Compensation under §166.215(4) of the Wisconsin Statutes.

- 4.11 **Payment of Contractor's Obligations:** Contractor agrees to make payment promptly, as just, due and payable to all persons furnishing services, equipment or supplies to Contractor. If Contractor fails, neglects or refuses to pay any such claims as they become due and for which the Division may be held liable, the proper officer(s) representing the Division, after ascertaining that the claims are just, due and payable, may, but shall not be required to, pay the claim and charge the amount of the payment against funds due Contractor under this Agreement. The payment of claims in this manner shall not relieve Contractor of any duty with respect to any unpaid claims.
- 4.12 **Dual Payment:** Contractor shall not be compensated for work performed under this Agreement by any state agency or person(s) responsible for causing a hazardous materials emergency except as approved and authorized under this Agreement.

## 5.0 Liability and Indemnity

- 5.1 **Scope:** During operations authorized by this Agreement, Contractor and members of regional hazardous materials response teams shall be agents of the State and protected and defended against tort liability under §166.03(8)(e), Wis. Stats. For purposes of §895.46(1), Stats., members of the hazardous materials response team shall during authorized operations be considered agents of the State and the State will indemnify Contractor as required under §895.46(1), Stats. For purposes of this section, operations means activities, including travel, directly related to a particular emergency response involving a hazardous material response/incident by a regional hazardous materials emergency response team. Operations also includes advanced training activities provided under this contract to the members of a hazardous materials response team, but does not include travel to and from the training.
- 5.2 **Civil liability exemption; regional and county emergency response team:** Under §895.483 Wis. Stats., 1) a regional emergency response team, a member of such a team, and a local agency, as defined in §166.22(1)(c), that contracts with the Division for the provision of a regional response team, are immune from civil liability for acts or omissions related to carrying out responsibilities under a contract under §166.215(1); 2) a county emergency response team, a member of such a team, and the county, city, village or town that contracts to provide the emergency response team to the county, are immune from civil liability for acts or omissions related to carrying out responsibilities pursuant to a designation under §166.21(2m)(e); and, 3) a local emergency planning committee created under §59.07(146)(a)1, Stats., that receives a grant under §166.21 is immune from civil liability for acts and omissions related to carrying out its responsibilities under §166.21.
- 5.3 **Statutory Civil Immunity:** §895.48(2) of the Wisconsin Statutes provides that a person is immune from civil liability for good faith acts or omissions related to assistance or advice which the person provides relating to an emergency or a potential emergency regarding either of the following:
- (1) Mitigating or attempting to mitigate the effects of an actual or threatened discharge of a hazardous substance.

(2) Preventing or cleaning up or attempting to prevent or clean up an actual or threatened discharge of a hazardous substance.

(3) Any hazardous substance predictor or any person who provides the technology to enable hazardous substance predictions to be made is immune from civil liability for his or her good faith acts or omissions in making that prediction or providing that technology.

The good faith of any hazardous substance predictor or any person who provides the technology to make a prediction is presumed in any civil action. Any person who asserts that the acts or omissions under subdivision three (3) above were not made in good faith has the burden of proving that assertion by clear and convincing evidence.

Under §895.48(2)(c)(3) of the Wisconsin Statutes, statutory civil immunity **does not** extend to acts or omissions which constitute gross negligence, or involves reckless, wanton or intentional misconduct. This is not intended to modify any right or duty under §895.48, Stats.

Additional terms, definitions and exceptions to this statute are explained in §895.48 of the Wisconsin Statutes.

5.4 **Contractor Indemnification of State:** When acting as other than an agent of the Division under this Agreement, and when using the State's or Division's vehicles or equipment, the Contractor shall indemnify, defend and hold harmless the State, Division, its officers, Divisions, agents, employees, and members from all claims, suits or actions of any nature arising out of the activities or omissions of Contractor, its officers, subcontractors, agents or employees.

## 6.0 Insurance Provisions

6.1 **Public Liability and Property Damage Insurance:** Contractor shall maintain, at its own expense, and keep in effect during the term of this Agreement, public liability and property damage insurance against any claim(s) which might occur in carrying out this Agreement. Minimum coverage is five hundred thousand dollars (\$500,000) liability for bodily injury and property damage including products liability and completed operations.

If Contractor is self-insured or uninsured, a Certificate of Protection in Lieu of an Insurance Policy shall be submitted to the Division certifying that Contractor is protected by a Self-Funded Liability and Property Program or alternative funding source(s), attached hereto as "Exhibit G". The Certificate is required to be presented prior to commencement of this Agreement.

6.2 **Automobile Liability:** Contractor shall obtain and keep in effect automobile liability insurance for its respective vehicle(s) during the term of this Agreement. This coverage may be written in combination with the public liability and property damage insurance mentioned in Subsection 6.1. Auto liability coverage limits shall not be less than two

hundred fifty thousand dollars (\$250,000) bodily injury each person, five hundred thousand dollars (\$500,000) per occurrence and two hundred fifty thousand dollars (\$250,000) property damage each occurrence or five hundred thousand dollars (\$500,000) combined single limit.

If Contractor is self-insured or uninsured, a Certificate of Protection in Lieu of an Insurance Policy shall be submitted to the Division certifying that Contractor is protected by a Self-Funded Liability and Property Program, or alternative funding source(s) attached hereto as "Exhibit G". The Certificate is required to be presented prior to commencement of this Agreement.

- 6.3 **Notice of Cancellation or Change:** Contractor agrees that there shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the Division.
- 6.4 **Certificate(s) of Insurance:** As evidence of the insurance coverage required by this Agreement, Contractor shall provide an insurance certificate indicating this coverage, countersigned by an insurer licensed to do business in Wisconsin, covering the period of the Agreement. The insurance certificate is required to be presented prior to commencement of this Agreement.

## 7.0 Standard Contract Terms, Conditions and Requirements

- 7.1 **Disclosure of Independence and Relationship:** Contractor certifies that no relationship exists between the regional team, the State or the Division that interferes with fair competition or is a conflict of interest, and no relationship exists between the team and another person or organization that constitutes a conflict of interest with respect to a state contract. The Department of Administration may waive this provision, in writing, if those activities of the Contractor will not be adverse to the interest of the State.

Contractor agrees as part of this contract for services that during performance of this contract, they will neither provide contractual services nor enter into any agreement to provide services to a person or organization that is regulated or funded by the contracting agency or has interests that are adverse to the contracting agency. The Department of Administration may waive this provision, in writing, if those activities of the Contractor will not be adverse to the interests of the State.

- 7.2 **Dual Employment:** §16.417 of the Wisconsin Statutes, prohibits an individual who is a state employee or who is retained as a consultant full-time by a state agency from being retained as a consultant by the same or another agency where the individual receives more than \$5,000 as compensation. This prohibition applies only to individuals and does not include corporations or partnerships.
- 7.3 **Employment:** Contractor will not engage the service of any person or persons now employed by the State, including any department, commission, or board thereof, to provide

services relating to this Agreement without the written consent of the employer of such person or persons and the Department of Military Affairs and the Division.

- 7.4 **Conflict of interest:** Private and non-profit corporations are bound by §180.0831 and §181.225 Wis. Stats., regarding conflicts of interest by directors in the conduct of state contracts.
- 7.5 **Recordkeeping and Record Retention:** The Contractor shall establish and maintain adequate records of all expenditures incurred under the Agreement. All records must be kept in accordance with generally accepted accounting principles, and be consistent with federal and state laws and local ordinances. The Division, the federal government, and their duly authorized representatives shall have the right to audit, review, examine, copy and transcribe any pertinent records or documents relating to any contract resulting from this Agreement held by Contractor. The Contractor shall retain all documents applicable to the Agreement for a period of not less than three (3) years after the final payment is made or longer where required by law.
- 7.6 **Team Personnel Removal:** In the event that an individual team member is substantiated to have been negligent or unresponsive to the contractual requirements, the Division, after consultation with Contractor and Contractor's Fire Commission/Board, may recommend the removal of this member from the regional hazardous material response team. A request by the Division to dismiss an employee shall not constitute an order to discipline or discharge the employee. All actions taken by the team and/or fire department management in regard to employee discipline shall be at the sole discretion of the team and/or fire department management.
- 7.7 **Hold Harmless:** The Division of Emergency Management, the Department of Military Affairs, and the State of Wisconsin shall be held harmless in any disputes the team and/or fire department may have with their employees. This shall include, but not be limited to, charges of discrimination, harassment, and discharge without just cause.
- 7.8 **Termination of Agreement:** The Division and/or Contractor may terminate this Agreement at any time **for cause** by delivering thirty (30) days written notice to the other Party. Upon termination, the Division's liability will be limited to the pro rata cost of the services performed as of the date of termination plus expenses incurred with the prior written approval of the Division. Upon termination, Contractor will refund to the Division within sixty (60) days of said termination all payments made hereunder by the Division to the Contractor for work not completed or not accepted by the Division.

Contractor may terminate this Agreement **at will** by delivering ninety (90) days written notice to the Division. In the event the Contractor terminates this Agreement for any reason whatsoever, it will refund to the Division within sixty (60) days of said termination all payments made hereunder by the Division for standby costs, under Subsection 4.1, provided to the Contractor for the contract year in which the termination occurs based in proportion to the number of days remaining in the contract year.

The Division may terminate this Agreement **at will** effective upon delivery of written notice to the Contractor, under any of the following conditions:

- (1) If Division funding from federal, state, or other sources is not obtained and/or continued at levels sufficient to allow for purchases of the indicated quantity of services, the Agreement may be modified to accommodate a reduction or increase in funds.
- (2) If federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments by this Agreement.
- (3) If any license or certification required by law or regulation to be held by the Contractor to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

Any termination of the Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

- 7.9 **Cancellation:** The State of Wisconsin reserves that right to cancel any contract in whole or in part without penalty due to non-appropriation of funds or for failure of the Contractor to comply with the terms, conditions, and specifications of this Agreement.
- 7.10 **Prime Contractor and Minority Business Subcontractors:** In the event Contractor subcontracts for supplies and/or services, any subcontractor must abide by all terms and conditions of the Agreement. The Contractor shall be responsible for contract performance whether or not subcontractors are used.

Contractor is encouraged to purchase services and supplies when/if applicable from minority businesses certified by the Wisconsin Department of Development, Bureau of Minority Business Development.

Contractor shall file with the Department of Military Affairs quarterly reports of purchases of such supplies and services necessary for the implementation of this Agreement.

- 7.11 **Executed Contract to Constitute Entire Agreement:** The contents of the RFP (including all attachments), RFP addenda and revisions, the Proposal of the Contractor, the Notice of Award, and additional terms agreed to, in writing, by the Division and the Contractor shall become a part of the Agreement herein. The written Agreement with referenced parts and attachments shall constitute the entire Agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to, in writing, by the contracting authority.
- 7.12 **News Releases:** News releases pertaining to the negotiation of this Agreement shall not be made without the prior approval of the Division.

- 7.13 **Applicable Law:** This Agreement shall be governed under the laws of the State of Wisconsin. The Contractor and State shall at all times comply with and observe all federal and state laws, local laws, ordinances and regulations which are in effect during the period of this Agreement and which may in any manner affect the work or its conduct.
- 7.14 **Assignment:** No right or duty, in whole or in part, of the Contractor under this Agreement may be assigned or delegated without the prior written consent of the State of Wisconsin.
- 7.15 **Successors in Interest:** The provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties to the Agreement and their respective successors and assigns.
- 7.16 **Force Majeure:** Neither party to this Agreement shall be held responsible for delay or default caused by fire, riots, acts of God and/or war which is beyond that party's reasonable control.
- 7.17 **Notifications:** Contractor shall immediately report by telephone and in writing any demand, request, or occurrence that reasonably may give rise to a claim against the State, its officers, Divisions, agents, employees and members. Such reports shall be directed to:

ATTN: Administrator  
Division of Emergency Management  
DMA Wisconsin  
PO Box 7865  
Madison, WI 53707-7865  
Telephone #: (608) 242-3232  
FAX #: (608) 242-3247

Copies of such written reports shall also be sent to:

ATTN: Office of Legal Counsel, WING-LGL  
WI Dept. of Military Affairs  
PO Box 14587  
Madison, WI 53714-0587

- 7.18 **Severability:** If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- 7.19 **Amendments:** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of Division and Contractor.

- 7.20 **Approval Authority:** Contractor's representative(s) certify by their signature herein that he or she, as the case may be, has the necessary and lawful authority to enter into contracts and agreements on behalf of the local government entity.
- 7.21 **Insufficient Funds:** The obligation of the Contractor under this Agreement is contingent upon the availability and allotment of funds by the Division to Contractor and Contractor may, upon thirty (30) days prior written notice, terminate this contract if funds are not available.
- 7.22 **No Waiver:** No failure to exercise, and no delay in exercising, any right, power or remedy, including payment, hereunder, on the part of the Division, State, or Contractor shall operate as a waiver hereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall effect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the Division, State or Contractor therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
- 7.23 **Construction of Agreement:** This Agreement is intended to be solely between the parties hereto. No part of the Agreement shall be construed to add, supplement, amend, abridge, or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.
- 7.24 **Disparity:** In the event of a discrepancy, difference or disparity in the terms, conditions or language contained in the RFP (including all attachments), RFP addenda and revisions, and the Agreement, it is agreed between the parties that the language in this extended Agreement shall prevail.

**Approving Signatures:**

**ON BEHALF OF THE DIVISION OF EMERGENCY MANAGEMENT (DIVISION)**

**Dated this \_\_\_\_ day of \_\_\_\_\_, 2009**

---

**Edward F. Wall, Division Administrator**

**On Behalf of the City of \_\_\_\_\_**  
A Municipal Corporation

**Dated this \_\_\_\_ day of \_\_\_\_\_, 2009**

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

**Printed Name:**

**Title: Mayor**

**Address: City Hall**

**City/State: \_\_\_\_\_, WI      Zip: 5\_\_\_\_\_**

**On Behalf of the City of \_\_\_\_\_**

**Dated this \_\_\_\_ day of \_\_\_\_\_, 2009**

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

**Printed Name:**

**Title: City Clerk/Treasurer**

**Address: City Hall**

**City/State: \_\_\_\_\_, WI      Zip: 5\_\_\_\_\_**

**On Behalf of the City of \_\_\_\_\_**

**Dated this \_\_\_\_ day of \_\_\_\_\_, 2009**

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

**Printed Name:**

**Title: City Administrator**

**Address: City Hall**

**City/State: \_\_\_\_\_, WI      Zip: 5\_\_\_\_\_**

**On Behalf of the City of \_\_\_\_\_ Fire Department**

**Dated this \_\_\_\_ day of \_\_\_\_\_, 2009**

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

**Printed Name:**

**Title: Fire Chief**

**Address:**

**City/State: \_\_\_\_\_, WI      Zip: 5\_\_\_\_\_**

**Approved as to form:**

**Dated this \_\_\_\_ day of \_\_\_\_\_, 2009**

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

**Printed Name:**

**Title: City Attorney**

**Address: City Hall**

**City/State: \_\_\_\_\_, WI      Zip: 5\_\_\_\_\_**

## EXHIBIT E

### REGIONAL RESPONSE TEAM BUDGET

FY 2009– 2010

FY 2010- 2011

REGIONAL RESPONSE TEAM: \_\_

NUMBER OF CORE TEAM MEMBERS: \_\_

NUMBER OF FIRE JURISDICTIONS: \_\_

DESIGNATED CAT TEAM(S): \_\_

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PERSONNEL AND ADMINISTRATIVE COSTS \$  
(Number of core team members x \$2325 per member)

OUTREACH COSTS \$  
(Number of fire jurisdictions x \$100 per jurisdiction)

EXPENDABLES \$

EQUIPMENT \$

EXTRAORDINARY/MISC. EXPENSES \$  
(Liability Insurance Premium)

CAT TEAM COSTS

ADJUSTMENTS

ANNUAL BUDGET \$

## Appendix D: Sample Interview Questionnaire

### Questions for WEM Administrators

1. Contract Negotiations: It has been reported that contracts are negotiated between a representative of DMA/WEM and each individual team. Please identify the following based upon the time you served as WEM administrator:

- How were the Hazmat contracts negotiated?
- Who from your agency negotiated the contracts? \_\_\_\_\_
- To your understanding who from the teams negotiated the contracts? (We are looking for a title not a name.)

We are looking for input on how, what and when information was exchanged during the contractual process between teams and DMA/WEM.

- What were the benefits?
- What were the drawbacks?

2. Agency internal fiscal process:

- How did your agency track Hazmat expenditures for the entire program?
- Identify any required submissions that teams sent to DMA/WEM related to expenditures and when those submissions occur.

3. Hazmat Expenditures:

Did your agency have an allowable expense list for the following:

- Personnel? Yes No
- Equipment? Yes No
- Vehicles? Yes No

4. Standards: What were the standards for the following?

- Equipment \_\_\_\_\_
- Expendables \_\_\_\_\_
- Vehicles \_\_\_\_\_
- Training \_\_\_\_\_
- Team size \_\_\_\_\_
- Training provider \_\_\_\_\_
- Cost per team member for initial training \_\_\_\_\_
- Cost per team member for yearly refresher training \_\_\_\_\_

5. Passive Review: It has been reported that the contracts must be submitted to Joint Finance Committee for passive review.

- Did your agency notify each team when contracts go for review? Yes No
- If so, what was the process for notifying the teams of passive review?
- Did this process meet the needs of the Hazmat program?

6. Data:

What type of data did your agency track for the following:

- Training \_\_\_\_\_
- Response \_\_\_\_\_
- Equipment depreciation \_\_\_\_\_
- Personnel rosters \_\_\_\_\_

◦ Was any of the data collected used to allocate funds during contract negotiations?

Yes No

7. Did the Chiefs' Working Group play a part in the contractual and fiscal process?

Yes No

8. Please provide any other information that you feel would be pertinent to the first report, which will cover the contractual and fiscal process.

## Questions for WEM Hazmat Training Coordinator

1. Contract Negotiations: It has been reported that contracts are negotiated between a representative of DMA/WEM and each individual team. Please identify the following:

- How are the contracts negotiated?
- Who from your agency negotiates the contracts? \_\_\_\_\_
- To your understanding who from the teams negotiates the contracts? (We are looking for a title not a name.)

We are looking for input on how, what and when information is exchanged during the contractual process between teams and DMA/WEM.

- What are the benefits of the current contractual negotiation process?
- What are the drawbacks of the current process?
- How can the process be improved?

2. Agency internal fiscal process:

- How does your agency track Hazmat expenditures for the entire program?
- Identify any required submissions that teams send to DMA/WEM related to expenditures and when those submissions occur.

3. Hazmat Expenditures:

Does your agency have an allowable expense list for the following:

- Personnel? Yes No
- Equipment? Yes No
- Vehicles? Yes No

4. Standards: What are the standards for the following?

- Equipment \_\_\_\_\_
- Expendables \_\_\_\_\_
- Vehicles \_\_\_\_\_
- Training \_\_\_\_\_
- Team size \_\_\_\_\_
- Training provider \_\_\_\_\_
- Cost per team member for initial training \_\_\_\_\_
- Cost per team member for yearly refresher training \_\_\_\_\_

5. Passive Review: It has been reported that the contracts must be submitted to Joint Finance Committee for passive review.

- Does your agency notify each team when contracts go for review? Yes No
- If so, what is the process for notifying the teams of passive review?
- Does this process meet the needs of the Hazmat program?

6. Data:

What type of data does your agency track for the following:

- Training \_\_\_\_\_
- Response \_\_\_\_\_

- Equipment depreciation \_\_\_\_\_
- Personnel rosters \_\_\_\_\_

◦ Is any of the data collected used to allocate funds during contract negotiations? Yes No

7. Does the Chiefs' Working Group play a part in the contractual and fiscal process?  
Yes No

8. Please provide any other information that you feel would be pertinent to the first report, which will cover the contractual and fiscal process.

## Questions for DMA Legal Counsel

1. Contract Negotiations: It has been reported that contracts are negotiated between a representative of DMA/WEM and each individual team. Please identify the following:

- How were the Hazmat contracts negotiated?
- Who from your agency negotiates the contracts? \_\_\_\_\_
- To your understanding who from the teams negotiates the contracts?  
We are looking for input on how, what and when information was exchanged during the contractual process between teams and DMA/WEM.
- What are the benefits of the current process?
- What are the drawbacks of the current process?

2. Agency internal fiscal process:

- How does your agency track Hazmat expenditures for the entire program?
- Identify any required submissions that teams send to DMA/WEM related to expenditures and when those submissions occur.

3. Hazmat Expenditures:

Does your agency have an allowable expense list for the following:

- Personnel? Yes No
- Equipment? Yes No
- Vehicles? Yes No

4. Standards: What are the standards for the following?

- Equipment \_\_\_\_\_
- Expendables \_\_\_\_\_
- Vehicles \_\_\_\_\_
- Training \_\_\_\_\_
- Team size \_\_\_\_\_
- Training provider \_\_\_\_\_
- Cost per team member for initial training \_\_\_\_\_
- Cost per team member for yearly refresher training \_\_\_\_\_
- Cost per team member for yearly refresher training \_\_\_\_\_

5. Passive Review: It has been reported that the contracts must be submitted to Joint Finance Committee for passive review.

- Does your agency notify each team when contracts go for review? Yes No
- If so, what is the process for notifying the teams of passive review?
- Did this process meet the needs of the Hazmat program?

6. Data:

What type of data does your agency track for the following:

- Training \_\_\_\_\_
- Response \_\_\_\_\_
- Equipment depreciation \_\_\_\_\_

◦ Personnel rosters \_\_\_\_\_

◦ Is any of the data collected used to allocate funds during contract negotiations? Yes No

7. Does the Chiefs' Working Group play a part in the contractual and fiscal process?

Yes No

8. Please provide any other information that you feel would be pertinent to the first report, which will cover the contractual and fiscal process.

### Questions for SERB Board Member

1. Contract Negotiations: It has been reported that contracts are negotiated between a representative of DMA/WEM and each individual team. Please identify the following based upon your knowledge for the time you were involved with the program:

- How were the Hazmat contracts negotiated?
- What was your role, as the DNR representative, in negotiating contracts?
- Who from the teams did you negotiate the contracts with? (We are looking for a title not a name.)

We are looking for input on how, what and when information was exchanged during the contractual process between teams and DMA/WEM.

- What were the benefits?
- What were the drawbacks?

2. Hazmat Expenditures:

In your communications with the teams, were standardized allowable expense lists used for the following:

- Personnel?    Yes    No
- Equipment?    Yes    No
- Vehicles?    Yes    No

3. Standards: Were funds allocated during contracts to create minimum standards for the following?

- Equipment \_\_\_\_\_
- Expendables \_\_\_\_\_
- Vehicles \_\_\_\_\_
- Training \_\_\_\_\_

Were standards set at any point in the process for the following?

- Team size \_\_\_\_\_
- Training provider \_\_\_\_\_
- Cost per team member for initial training \_\_\_\_\_
- Cost per team member for yearly refresher training \_\_\_\_\_

4. Data: When the process began was there an idea that data would be collected and assessed to make future contract decisions? Yes No

- Were contracts awarded based on existing data? Yes No

5. Did the Chiefs' Working Group play a part in the contractual and fiscal process? Yes No

6. Please provide any other information that you feel would be pertinent to the first report, which will cover the contractual and fiscal process.

## Appendix E: HERC Report Recommendations

### *Team Locations*

“The HERC reviewed a number of alternatives for the placement of the Regional Response Teams (RRTs). Option 1 calls for the placement of 11 RRTs (heavy teams) at an approximate cost of \$4.2 million dollars for training, equipment, administration, and maintenance. The teams would be located in the following cities utilizing their full-time fire departments: Eau Claire/Chippewa Falls, Green Bay, Kenosha, La Crosse, Madison, Manitowoc, Milwaukee, Oshkosh, Racine Superior, and Wausau.

The HERC, in recommending Option 2, would establish 3 heavy RRTs and 6 light RRTs at an approximate cost of \$2,133,250 dollars. This option will provide adequate hazardous materials response coverage statewide in protecting public health, safety and our fragile environment. The heavy teams will be located at the following host RRT sites: Eau Claire/Chippewa Falls, Madison, and Wausau. The location of the 6 light RRTs will be: Ashland, Janesville/Beloit, Marinette, Oshkosh, Prairie du Chien, and Superior.” (p.8)

### *Training*

There must be a common philosophy toward hazmat training statewide. Future training initiatives will be guided in part by OSHA’s final rule 1910.120 dated March 6, 1989 and the National Fire Protection Association (NFPA) 472, 1989 edition, standard for Professional Competence of Responders to Hazardous Material Incidents.” (p.10)

“Training recommendations are as follows:

- ✓ Utilize Lakeshore Technical College
- ✓ Develop statewide standards and certification process for RRT and hazmat responders statewide.
- ✓ Provide funding for Level A training to all designated RRTs.
- ✓ Assist existing Level A teams statewide maintain their training levels.
- ✓ Fund an annual 8-hour refresher course for Level A.
- ✓ Fund competency testing for previously trained response team personnel.
- ✓ Fund train the trainer programs.
- ✓ Assist communities that are trying to improve their response capabilities.” (p.15-16)

### *Equipment*

A recommendation for funding was made for heavy and light teams. “The list of equipment needs (listed in the report) has been developed utilizing expertise from existing hazardous materials response teams and standards set forth by NFPA 471 and OSHA standards.

Vehicle and Equipment cost per Heavy Team total \$307,750

Vehicle and Equipment cost per Light Team total \$175,000 (p.18)

### *Liability*

It was recommended that RRT member be covered by:

- ✓ Liability Insurance
- ✓ Attorney Representation
- ✓ Workman’s Compensation

- ✓ Disability
- ✓ Life Insurance
- ✓ Medical Coverage (p.19)

#### *Cost Recovery*

“There is to be created a ‘special hazardous materials emergency response fund’ to assist RRTs in recouping their immediate response costs. 1989 Wisconsin Act 256 which was recently signed into law by Governor Thompson, allows local first responders to bill the responsible party for their costs.” (p.20)

#### *Personnel Compensation*

“Existing union contracts of RRT members must in all cases be met. If volunteer fire department personnel are part of the RRTs, they must be compensated. A possible method could be in the form of a special response per diem. In addition, team members, whether full-time and under local union contract or volunteers, should receive some form of annual stipend for their services above and beyond their normal work duties.” (p.21)

#### *Administration*

“It is proposed that the Department of Military Affairs, Division of Emergency Government take administrative responsibility for the response system. It is further recommended that the Administrator of the Division of Emergency Government through his or her Deputy Director of Hazardous Materials Safety and Incident Response carry out these direction and control duties. They will be assisted by one support staff and a steering/advisory board consisting of one response team leader from each of the RRTs.” (p.22)

For more details on these topics and to view a project start-up costs budget, annual operating budget, and possible funding alternatives, see the HERC report. Appendices of the HERC report include; Acronyms and definition list, levels of response definitions (with pictures), questionnaire results, spill data statistics from 1978-1989, a map with spill release rates by region, DNR reported spill summary data from 1968-1978, list of most hazardous facility locations based on number of reportable chemicals, calculations of cities within 100 road miles of 3 particular cities, and the 1989 Act 115.



## Append G: Written Questionnaire Fire Chief Responses

### *Fire Chiefs Questionnaire*

Ten chiefs were interviewed. Eight of the chiefs were interviewed face to face, at their request. The Milwaukee Chief sent his hazmat representative to the interview. The Madison Fire Chief's interview was conducted over the phone, as she was not at the group meeting and interview sessions in Plover and did not send a representative. Lastly, the Chief for Eau Claire said that the Chippewa Falls Chief's interview represented his views as well, since it is a joint team. However, he did submit a completed written interview form for our records. Every Fire Chief completed a written questionnaire with their own answers. It should be noted that it is our understanding that most of the Fire Chiefs discussed the questionnaire together before completing the form and participating in the interviews.

**1. Contract Negotiations:** It has been reported that contracts are negotiated between a representative of DMA and each individual team. Please identify all people involved in your team's negotiations.

Who from your city negotiates with DMA?

100% said Fire Chiefs negotiate. Many teams said that city attorneys review the contract.

To your understanding who represents DMA in the negotiations?

100% said legal counsel for DMA negotiates on behalf of WEM. Some chiefs referenced WEM administrator involvement and one person specifically said Johnny Smith in recent past was involved.

We are looking for input on how, what and when information is exchanged during the contractual process between the teams and DMA.

What are the benefits of the current contractual negotiation process?

100% said there are none

What are the drawbacks of the current process?

100% said there are no negotiations and it is often a "take it or leave" contract

How can the process be improved?

10/10 said need open communications

9/10 said begin negotiations 6 months in advance (January)

10/10 said process should include all agencies together at least once during negotiations

### **2. Team Internal Fiscal Process:**

When your department receives payment from DMA is this money specifically designated for Hazmat expenses? 100% said yes, they have separate hazmat account in city

How does your agency track hazmat expenditures? Processes varied by department based on local city system but 100% track expenditures for the team.

Identify any required submissions DMA related to expenditures and when those

submissions occur.

6/10 said reported data to WEM hazmat training coordinator,  
1/10 said reported to WEM hazmat training coordinator and DMA legal counsel  
1/10 said reported to DMA legal counsel, and 2/10 were unclear or did not  
specifically identify a person

**3. Hazmat Expenditures:** Does your team consult an allowable expense list for the following:  
personnel, equipment, vehicles?

FEMA standards are used for response reimbursement.

Generally, no established expense list is used by each team. However, consensus was team  
coordinators are working on creating a standardized list.

\*This question was apparently too broad and caused some confusion. The intent was clarified in  
person at the time of the interview.

**4. Standard:** What are the standards for the following: equipment, expendables, vehicles,  
training, team size, training provider, and cost for initial and on-going training per team  
member?

100% reported that except for expendables, applicable NFPA and DOT standards used for  
equipment and training.

100% reported size varied based on individual team's criteria/special needs. For example, the  
number could be determined by the number of people in a particular fire house, number on team  
might be split between two departments, or may be based on number needed for coverage  
capability for hazmat and normal duties.

How teams trained varied. For initial training:

1/10 used in-house instruction

5/10 used a vocational/technical college

1/10 used Michigan State Patrol

1/10 used Michigan State Patrol and in-house

2/10 answers are unclear

Ongoing training was generally conducted in-house by all teams, with the exception of specialty  
training that members might need. Grant funds used for training were identified by at least one  
team.

**5. Passive Review:** It has been reported that the contracts must be submitted to Joint Finance  
Committee for passive review.

Is your team notified when each contract goes for review?

9/10 said no

Does this process meet the needs of your team?

100% said no. Majority of teams stated that passive review would not be necessary if there was  
a good negotiation process in place.

**6. Data Collected:** What type of data does your team track for training, response, equipment depreciation, and personnel rosters?

100% reported collected data on training, response, equipment depreciation, personnel roster.

Do you include this data when making budget requests for contract negotiations?

6/10 said yes

3/10 said no

1/10 said yes and no

**7. Does the Chief's Working Group play a part in the contractual and fiscal process?**

8/10 said no, however the group should play a role

2/10 said yes and no

**8. Please provide any other information that you feel would be pertinent to the first report, which will cover the contractual and fiscal process.**

- Should be standardized equipment and training
- Chiefs working group should be involved
- Hazmat should be tied into state's overall response network/capabilities
- Funding should be tied to capacity, outcomes, and expectations
- WEM/DMA should advocate for the teams
- Revamp process from "take it or leave it"
- Involve the Fire Chiefs earlier
- Fire Chiefs need ore input/should set criteria for teams
- Contract reviews at least 6 months in advance
- Risk factors/back up capabilities need consideration
- Program needs to be treated as regional support network, not as individual teams
- Fire Chiefs best ones to resolve problems.

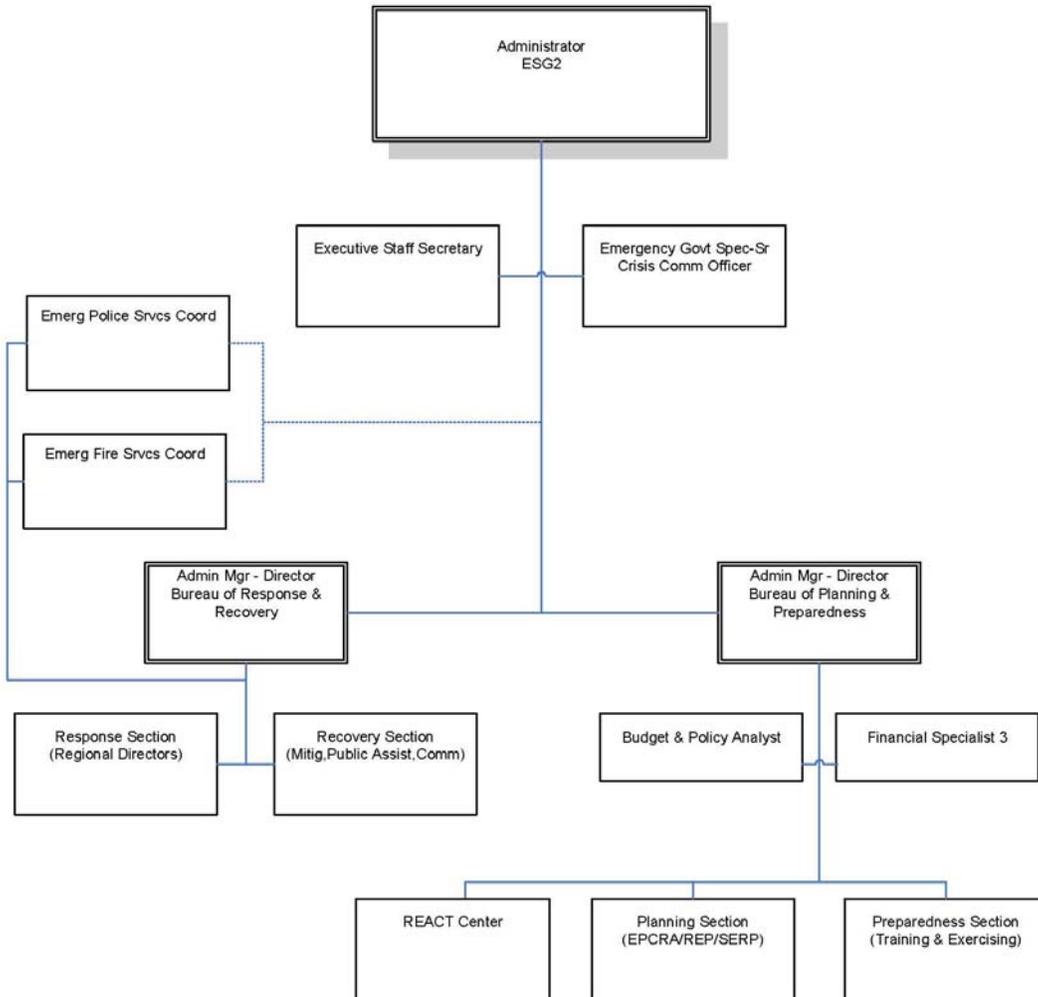
**Appendix H: Data Collection Form used by WEM Hazmat Training Coordinator**

This table shows what information is collected on a quarterly basis, from each Level A team, by the Hazmat Training Coordinator at WEM. The actual report is in an Excel format but for simplicity sake, we are showing it in a Word table.

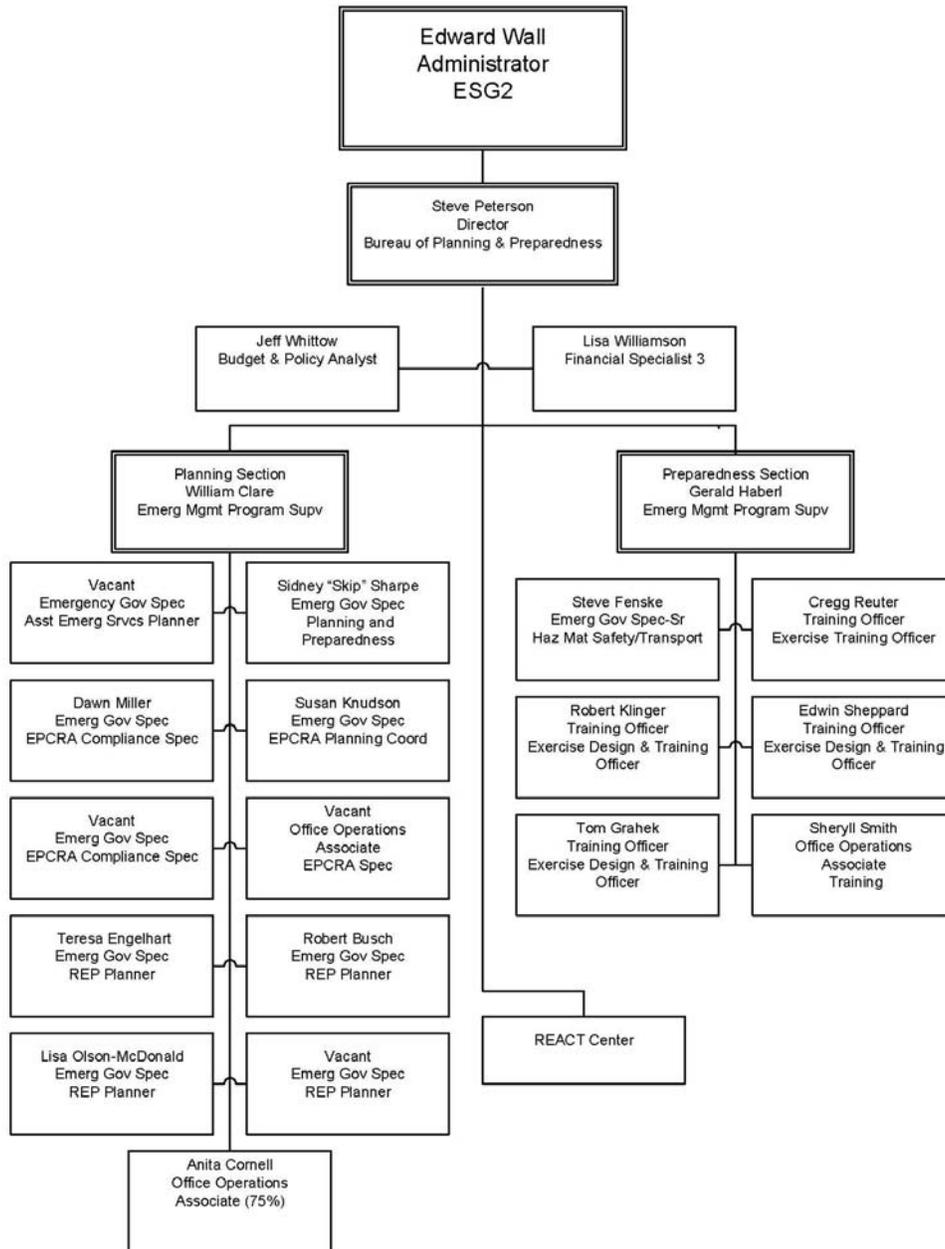
<b>Regional Response</b>	<b>Date</b>	<b>State #</b>	<b>Address</b>	<b>City/County</b>	<b>Nature of Call</b>
<b>County Response</b>	<b>Date</b>	<b>State #</b>	<b>Address</b>	<b>City</b>	<b>Nature of Call</b>
<b>Out-reach Present.</b>	<b>Date</b>	<b>Time</b>	<b>Location</b>	<b>Entity</b>	<b>Description of Presentation</b>
<b>Out-Reach Exercises</b>	<b>Date</b>	<b>Time</b>	<b>Location</b>	<b>Entity</b>	<b>Description</b>
<b>Phone Assists</b>	<b>Date</b>	<b>Time</b>	<b>Problem/Question</b>	<b>Entity</b>	<b>Advice Given</b>
<b>Training</b>	<b>Date</b>	<b>Time</b>	<b>Location</b>	<b>Class Length</b>	<b>Description</b>
<b>Grants: Applied/Rec'd</b>	<b>Agency</b>	<b>Date</b>	<b>Source of Grant</b>		<b>Reason for Grant</b>

# Appendix I: WEM Organizational Chart

## Wisconsin Emergency Management

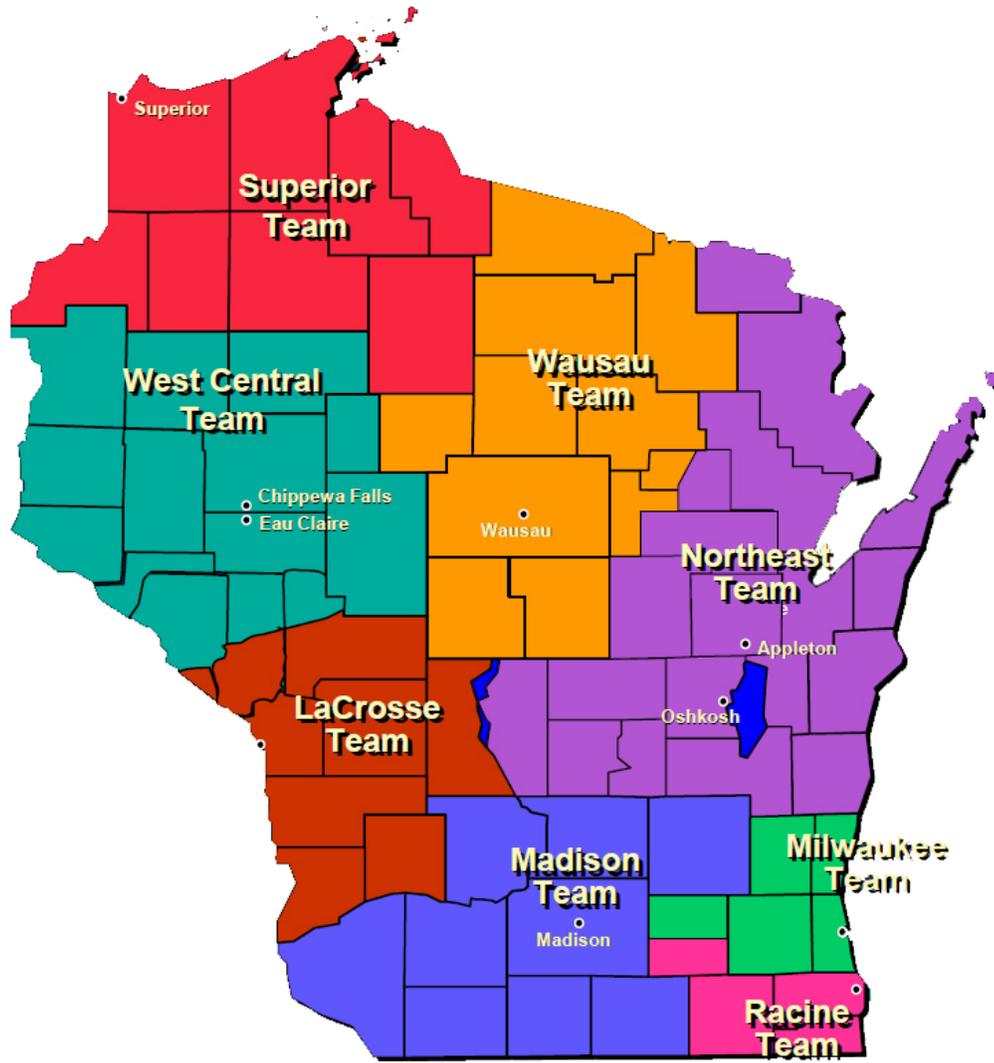


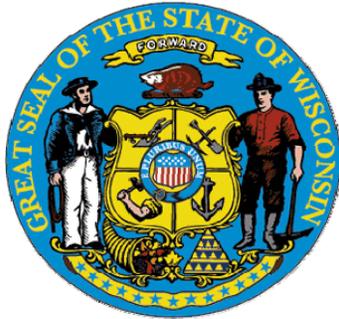
WEM - BUREAU OF PLANNING AND PREPAREDNESS



10/6/2009

## Appendix J: Map of Level A Hazmat Teams





This is a publication of the  
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*November 2009*

The logo for the Office of Justice Assistance (OJA) features the letters "OJA" in a large, bold, serif font. The letter "O" is stylized to contain a map of the state of Wisconsin. Below the "OJA" text is a horizontal line, and underneath that line, the words "OFFICE OF JUSTICE ASSISTANCE" are written in a smaller, all-caps, serif font.

OFFICE OF JUSTICE ASSISTANCE