
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: SB 978
Author: McGuire
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Urgency: No
Consultant: Gabrielle Meindl
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Fiscal: Yes

SUBJECT: Department of Resources Recycling and Recovery: wildfire debris cleanup and removal: contracts

DIGEST: Requires the Department of Resources Recycling and Recovery (CalRecycle) to prequalify contractors to enter into contracts to perform prescribed wildfire debris cleanup and removal work in communities impacted by wildfires. Prohibits CalRecycle from prequalifying or short-listing, or awarding a contract to any bidder for the performance of any portion of a wildfire debris cleanup and removal project, unless the bidder meets prescribed eligibility requirements.

ANALYSIS:

Existing law:

- 1) Establishes the California Disaster Assistance Act (the Act), administered by the Director of Emergency Services. (Government Code § 8680 et seq.)
 - a) Requires a state agency, upon request of the Director of California Governor's Office of Emergency Services (Cal OES) and to the extent that funds are allocated therefor, to render services and perform duties within its area of responsibility when considered necessary to carry out the purposes of the Act. At the direction of Cal OES, the Department of Resources Recycling and Recovery (CalRecycle) manages wildfire debris removal operations throughout the state.
 - b) Requires the Director of Cal OES to adopt regulations, as necessary, to govern the administration of a disaster assistance program that includes specific project eligibility requirements, a procedure for local governments to request the implementation of programs, and a method for evaluating these requests by Cal OES.

- 2) Establishes in the California Environmental Protection Agency CalRecycle, administered under the control of an executive officer known as the Director of Resources Recycling and Recovery. (Public Resources Code § 40400 et seq.)
- 3) Defines a skilled and trained workforce as a workforce that meets these conditions: (Public Contract Code § 2601)
 - a) All workers performing work in an apprenticeable occupation are either skilled journeypersons or registered apprentices;
 - b) Skilled journeypersons have either graduated from an apprenticeship program approved by the state or by the federal government or have at least as many hours of on-the-job experience as would be required to graduate from an apprenticeship program for the occupation; and
 - c) At least 60% of skilled journeypersons employed on the project are graduates of an apprenticeship program for the applicable occupations except for specific occupation where the requirement is 30%.

This bill:

- 1) Requires CalRecycle to prequalify contractors to enter into contracts to perform prescribed wildfire debris cleanup and removal work in communities impacted by wildfires. Specifies that the work, for funding purposes, be deemed a public works construction project.
- 2) Requires any contractor seeking to enter into a contract before the onset of major damage to obtain and submit to CalRecycle a standard form of questionnaire and financial statement, including a complete statement of the bidder's financial ability and experience in performing the preparation, removal, transport, recycling or disposal of metals, ash, debris, concrete foundations and flatwork, potentially dangerous trees, and contaminated soil on residential and public properties, verified under oath.
- 3) Prohibits CalRecycle from prequalifying or short-listing, or awarding a contract to any bidder for the performance of any portion of a wildfire debris cleanup and removal project, unless the prime contractor (bidder) meets the following requirements:
 - a) Has a valid general engineering contractor license with a state hazardous substance removal certification;
 - b) Is registered with the Department of Industrial Relations and qualified to bid;

- c) Provides an enforceable commitment to the department, for itself and its subcontractors at every tier, to use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades;
- d) Demonstrates the existence of, for itself and its subcontractors at every tier, an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, that has graduated apprentices in each of the preceding five years;
- e) Will self-perform at least 30 percent of the value of the original bid using its own organization and employees; and
- f) Experience modification rate, within the state, for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category, or if the contractor is a party to an alternative dispute resolution system.

Background

- 1) *Fire in California.* Catastrophic and devastating wildfires have occurred repeatedly in the state in recent years. In 2021 alone, preliminary data show almost 9,000 wildland fires burned almost 2.6 million acres in the state. Slightly fewer wildland fires in 2020 burned almost 4.4 million acres – a modern record. The 2020 August Complex Fire in northern California – the largest fire in California’s modern history – burned over 1 million acres by itself. The 2021 Dixie fire also almost reached 1 million acres. Two wildland fires in the last year burned over the crest of the Sierras which had not been previously observed. Nine of the twenty largest and seven of the twenty most destructive wildland fires in state history occurred in 2020 and 2021. Six of the seven most costly wildfires in US history occurred in California in the last 5 years. In the last five years from wildland fire, tens of thousands of structures – almost entirely homes – have been destroyed, insured losses incurred are in the billions of dollars, prime habitat has been destroyed or damaged, and, tragically, hundreds of lives have been lost. In addition, millions of Californians have been exposed to unhealthy air quality due to the wildfires, and millions of metric tons of carbon dioxide were emitted from burning trees and vegetation.

While wildland fires have always been present in the state, the number of days with extreme fire risk has more than doubled in the last 40 years. This is likely to continue to increase. One of the impacts of climate change in the state is an

increase in the frequency and intensity of wildfires, and both of these have noticeably increased in the last two decades. Instead of a discernible fire season, wildfires are occurring throughout the year. In forested regions, decades of fire suppression, historic logging practices and drought have produced unhealthy forests that exacerbate the risk of an extreme wildfire developing when a fire occurs. Further, continued development in the Wildland Urban Interface (WUI) puts more homes at risk from wildland fire.

- 2) *The State-Managed Debris Removal Program.* Every year, California faces the threat of devastating wildfires that have the potential to claim lives, destroy property, and harm the environment. These disasters often create a significant amount of debris, which can include ash, metal, concrete, building materials, contaminated soil and hazardous materials. Disaster debris must be removed and properly managed to reduce threats to public health and safety, protect the environment, and help communities recover and rebuild.

As part of California's comprehensive wildfire recovery efforts, Cal OES coordinates with fire-impacted communities to determine the best local recovery solutions, which sometimes include locally managed debris removal programs with state technical guidance and assistance.

The State-Managed Debris Removal Program Operates in two phases. Phase one involves crews managed by the Department of Toxic Substances Control and the US Environmental Protection Agency removing household hazardous waste such as paints, cleaners, solvents, oils, batteries, pesticides, compressed cylinders and tanks, and easily identifiable asbestos.

After removing household hazardous waste, private contractor crews managed by CalRecycle remove the remaining asbestos, assess and document properties, and clear contaminated soil, ash, metal, concrete, hazard trees and other debris to restore properties to pre-fire conditions.

- 3) *Consolidated Debris Removal Program.* For over a decade, CalRecycle has supported communities impacted by wildfires and other disasters by safely disposing of debris and ensuring properties are safe for survivors to rebuild. At the direction of the Cal OES, CalRecycle collaborates with local, state, and federal partners in recovery efforts. Debris removal operations recycle, reuse, and divert debris to the greatest extent possible.

Cal OES has mission tasked CalRecycle to operate the statewide Consolidated Debris Removal Program to manage wildfire debris removal operations

throughout the state. This program gives California's wildfire survivors a streamlined option to clear their properties with no out-of-pocket costs.

Since 2018, CalRecycle has provided technical expertise, engineering support, contract management, legal, administrative, fiscal and budgetary services to conduct debris removal on approximately 22,000 parcels across California. CalRecycle is currently managing two structural debris and hazard tree removal operations following the devastating 2021 statewide fire siege.

- 4) *CalRecycle Contracts*. CalRecycle does not have in-house crews or machinery to deploy for debris removal purposes. Thus, 100% of debris removal is contracted out to private contractors. CalRecycle is mission tasked by CalOES to:
 - a) Develop, solicit, award, and execute the needed service and consultant contracts to assess parcels and remove structural debris and hazard trees from those counties designated under the federal disaster declaration/state proclamation of emergency.
 - b) Staff key positions within the Incident Management Team under the federally required Incident Command System (typically 2 Safety Officers, Finance Admin Lead (Contract Manager), 2 Debris Group Supervisor/Operations Section Chiefs, and 2 state Planning Section Leads).

The Debris Group Supervisors and Planners support contract management in the oversight of field crews and necessary documentation of work orders, change orders, contract amendments, notices of disputes and contractor notice of performance which serve to maximize federal reimbursement eligibility.

CalRecycle maintains an Emergency Debris Recovery Contracts Listserv that notifies subscribers when emergencies require post-incident contractor assistance. The intent of this list is to provide interested parties with updates when emergencies require post-incident contractor assistance for debris removal and disposal services and/or debris assessments, monitoring, and environmental consulting services.

- 5) *FEMA reimbursement*. The Federal Emergency Management Agency's (FEMA) Public Assistance Program provides supplemental grants to state, tribal, territorial, and local governments, and certain types of private non-profits so that communities can quickly respond to and recover from major disasters or emergencies. The assistance FEMA provides is subject to a cost share. The cost share ensures local interest and involvement through financial participation. The Federal share is not less than 75 % of the eligible costs. The

remaining 25% cost is shared by the state and local government. Also, the Federal cost share may be increased in limited circumstances and for limited periods of time. Costs considered for reimbursement includes salaries/benefits, goods and services (contracts), travel expenditures, and administration. Reimbursement by the federal government is made once projects are completed, which include all debris removal, hazard tree felling, claims adjudication, compilation of final reports by consultants, and all other requirements necessary by FEMA and Cal OES for a satisfactory closeout.

The Code of Federal Regulations (CFR) lays out the requirements for allowable of costs, including cost reasonableness, and the procedural timeframe for the state to submit a project worksheet to FEMA, including a 60-day requirement from the first substantive meeting with FEMA to identify damage and report damage to FEMA.

- 6) *Strong incentive to move quickly.* According to CalRecycle, there is a strong legal basis to proceed with work as quickly as possible, which include the following:
 - a) *FEMA eligibility rules:* FEMA's definition of eligible work requires that the work is the result of a declared incident, or an immediate threat resulting from the declared incident (i.e., emergency work) to address damage caused by the declared incident.
 - b) *Risks and Hazards:* Ash, contaminated debris, soil contamination (from metals, plastics, asbestos), and hazard trees post a significant human health and environmental risk. As such, the Federal Public Assistance delivery schedule requires emergency projects be completed within 6 months of an incident period, with the opportunity to extend project operations only with adequate justification to preserve maximum federal reimbursement eligibility.
 - c) *Governor's Orders:* Each of the Governor's Proclamations of a State of Emergency and subsequent Executive Orders contains provisions directing state agencies to provide relief and initiate disaster recovery. CalRecycle accelerates its procurement process so that it can deploy contractors quicker. These orders are issued under the Governor's authority under the Emergency Services Act.

Comments

- 1) *Purpose of Bill.* According to the author, "Wildfire clean up and recovery is crucial to getting the victims of wildfires back into their communities. SB 978 would streamline and enhance the processes for awarding wildfire cleanup and

recovery contracts. This bill requires CalRecycle to prequalify contractors entering into contracts to perform prescribed wildfire debris cleanup and removal work in communities impacted by wildfires. Clean up of debris includes the removal, transport, and recycling/disposal of metals, ash, debris, concrete foundation, potentially dangerous trees and contaminated soil on residential, commercial and public properties. The clean up of this debris is vital to ensuring that the victims of California's fires can return to safe and ready to rebuild communities.”

- 2) *Prequalifying contractors in communities impacted by wildfires makes sense, but some eligibility requirements could have unintended consequences.* Given the on-going danger of wildfires in many parts of the state, it is a good idea to specifically grant CalRecycle the authority to prequalify contractors to mitigate delays in wildfire debris cleanup. It also makes sense to enshrine the existing practice of requiring contractors possess a valid general engineering contractor license (with a hazardous removal certificate) and be registered with DIR. However, this bill goes beyond just prequalifying contractors under existing wildfire debris contract practices. The bill would apply to any contract of any portion of a wildfire debris cleanup and limit the awarding of contracts to prime contractors that: use a skilled and trained workforce; demonstrate an agreement with a registered apprenticeship program; will self-perform at least 30 percent of the value of the bid using its own organization and employees; and demonstrate a prescribed history of safe work performance.

According to the author, the bill's contractor eligibility requirements will help ensure: the use of the most highly trained workforce available; the delivery of projects on time and on budget; the prime contractor is not operating as a pass-through entity and has control over the project; projects are performed in a safe manner that best protects workers; and the use of apprentices, thereby supporting regional construction apprentice programs.

The author states that the intent of the bill is to streamline the awarding of wildfire debris cleanup contracts in order to get victims back in their communities as quickly as possible after a fire. Staff would note, however, that requiring additional contract elements could prove challenging and result in delays in awarding wildfire debris cleanup contracts.

It is unlikely that any of the hired debris removal contractors for the 2021 operations would have met the bill's 30 percent “self-performance” requirement. According to CalRecycle, contractors have needed to subcontract major parts of the operation, including trucking and hauling, asbestos

abatement, and hazard tree felling. Hazard tree felling, for example, is operationally distinct from debris removal and debris removal entities may not necessarily have the expertise and/or ability to do tree felling, requiring debris removal companies to subcontract hazard tree felling operations.

As this bill moves forward, the author should continue to work with CalRecycle and Cal OES to ensure that the new contract provisions don't have the unintended consequence of hampering the expeditious removal of wildfire debris, as the risks and hazards of ash, contaminated debris, soil contamination, and hazard trees can pose a significant risk to human health and the environment.

Related/Prior Legislation

AB 1569 (Committee on Emergency Management, 2021) would have required Cal OES to submit an annual report to the Legislature that details the priority investments and expenditures of the federal Hazard Mitigation Grant Program, which Cal OES administers. This bill died in the Assembly Appropriations Committee

AB 1375 (Bigelow, 2019) would have increased, from 75% to 90%, the state's share of disaster-related costs connected with tree removal in high hazard zones pursuant to a governor-declared emergency in 2015. This bill died in the Assembly Appropriations Committee.

SB 45 (Allen, 2019) would have enacted the Wildfire Prevention, Safe Drinking Water, Drought Preparation, and Flood Protection Bond Act of 2020, subject to voter approval in the November 3, 2020, statewide general election. This bill died on the Assembly Floor.

SOURCE: Author

SUPPORT:

California State Council of Laborers
International Union of Operating Engineers
State Building and Construction Trades Council
United Contractors (UCON)

OPPOSITION:

None received

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