

US EPA ARCHIVE DOCUMENT



At the 11th Annual State Fund Administrators Conference, June 2003, in Boise, Idaho, there was much discussion concerning LUST cleanup reimbursement, Pay for Performance (PFP) style. We've selected some of the questions asked and some of the answers provided that we felt might be of interest to state fund administrators considering implementing PFP.

PAY FOR PERFORMANCE

Q. When you negotiate a PFP agreement, how do you know when you get a good price?

A. Experience, experience, experience! The more experience state officials and contractors have in PFP, the more confident all the parties will be with the negotiated price. For example, Florida program personnel, with over 250 agreements, have gained considerable experience at knowing what things cost. For each project, three state project managers independently review the cleanup plan developed by the negotiating contractor and then develop an estimate of the price of the cleanup. These three estimates are then compared to the price proposed by the contractor. "If the contractor had a very high price and then suddenly comes down to meet your estimate, you know there was a lot of fat in the proposal to begin with," said Florida DEP's Brian Dougherty.

Oklahoma, on the other hand, uses the Tank Racer costing program as a basis for negotiations. "Tank Racer removes any question of arbitrariness and has proven useful in court," said Dave Kelley, Oklahoma Corporate Commission, PST Division.

Q. What were some of the most unexpected benefits of PFP?

A. One state representative noted that contractors make their systems work better without contacting agency staff. He said the back and forth calls between state staff and contractor, the change orders, and the cost overruns all go away under PFP.

Art Shrader, South Carolina DHEC, recalled one occasion when a hurricane was approaching. The PFP contractor notified his office that he was shutting down the systems. Six systems were under water, and the state didn't have to pay to replace any of them.

"PFP helped whittle out all the bad consultants. Now, the technical people that we work with are more

knowledgeable. The good consultants rise to the top and stand behind their work," said Dave Kelley.

Q. How has PFP changed the way you approach site characterization?

A. "You need more thorough site characterization for consultants to feel comfortable about entering a PFP agreement," said Chuck Schwer, Vermont DEC. "Our fund pays a bit more for a better characterization, but it's worth it."

Art Shrader noted that if you don't have a good site assessment, you're gonna find out about it in the price tag.

Q. Do you allow for real-time sampling after the contract is awarded?

A. In South Carolina, baseline levels are established before entering a PFP agreement. If site conditions change significantly between the time of the baseline sampling and the implementation of the agreement (e.g., free product levels double), the contractor can be released from the agreement and the project can be re-bid.

Q. Does state lead on a cleanup seem to work more smoothly?

A. Florida experience says get as much state lead as you can. You have more problems when owners choose the contractor. Vermont, on the other hand, has not done any state-lead PFP work; however, they've found that if they work very closely with the owner/operator, a better agreement can be developed. VTDEC staff have helped owners/operators conduct bidding and routinely meet with contractors during the development of the agreement. "Working as a team, owners/operators and the state can be each other's best ally," said Chuck Schwer.

Q. How do you justify which contractor is chosen?

A. To have an objective way to evaluate bids, Utah uses a Proposal Evaluation Form that consists of a list of the criteria required for each bidder's proposal and a scoring system for evaluating the proposals according to the criteria. Six people score the proposals using the same rating scale. Higher ratings are assigned to bidders that clearly define the work to be performed. Higher ratings are also assigned to realistic assumptions of equipment performance, flexible cleanup plans that cover a range of potentially unknown conditions, and offers that provide adequate equipment and backup in the event of breakdown, that adequately address all environmental and health and safety concerns, and that minimize the risk of not completing work on schedule. (For a copy of Utah's Request for Bid Form, contact Randy Taylor at rtaylor@deq.state.ut.us.)

Q. What techniques do states use to control contractors?

A. Since the stakes are high under PFP, you need to ensure that your agreements have some stiff consequences if the contractor walks away from the project. For example, in Vermont, if the contractor doesn't fulfill his obligations, he risks losing work under the fund for three years. In Oklahoma, if a contractor fails to fulfill his contract, he cannot perform any remediation work for two years, by legislation. "If you don't have such legislation, you should put it into the contract," remarked Kelley.

Q. Does the ability to encumber funds through PFP help prevent raids on state funds?

A. In 2002, the Vermont fund was raided by the legislature. If not for PFP and monies encumbered for the cleanups, the amount taken by the legislature would have been much larger. In Oklahoma, because of PFP, they were able to encumber funds. Florida has found that if you encumber funds, money is saved. ■