Section IV

CONTINGENCY PLANNING

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ABSTRACT: Oil spill response has evolved tremendously over the past 20 years in technology and technique, as well as in the social demand for a clean environment. The cost of response to a pollution incident has likewise grown at a time in which both federal and private funds are less available. Although the spiller may publicly claim he will clean up the spill no matter what the cost, cost becomes an issue as the bills start coming in. The purpose of this paper is to provoke consideration of the financial management of an oil spill response, not only to reduce costs, but to reduce confusion during the early days of a response. As in any type of emergency response, contingency planning is essential for success. Having designated, but flexible, procedures and plans in place before the spill will allow the experts to concentrate on mitigation instead of future litigation. The ideas presented here are based on experience in federal responses, common sense, basic financial management principles, and a business philosophy of integrity and efficiency.

Each year tens of thousands of businesses are created. According to Forbes magazine, 54 percent of these businesses will fail. Most businesses start with a good idea, hard work, and ambition, but still cannot make a profit. A major reason for this outcome is the failure to devise and execute a financial plan that can accommodate likely peaks and valleys and define actual costs and profit margins clearly. I submit the same failure is common for those of us involved in oil pollution cleanup. The purpose of this paper is to emphasize the importance of financial planning as it relates to pollution cleanup activities for both the contractor and the spiller. We should all get the most “bang for the buck,” while maintaining profit margins that keep the cleanup industry healthy and competitive. It is in everyone’s interest to be efficient, timely, and professional in all aspects of the inevitable cleanup.

This paper covers three phases of financial management: before, during, and after the spill. Actions are recommended not only for the contractor, but for the On-Scene Coordinator (OSC) and the spiller as well.

Before the spill

We are all of us involved in contingency planning of some sort, from maintaining a list of names in a notebook to an elaborate and comprehensive library of information. Nevertheless, financial contingency planning is often overlooked by contractors as well as regulatory agencies and potential spillers. This failure in planning results in chaos for the first days of a major spill as well as a lack of control over costs for the spiller and insurance of reimbursement for the contractor. Although initial chaos is to be expected, the effects on the bottom line can be reduced by organizing, preparing, and executing a financial plan. This plan anticipates actions needed to ensure timely financial support, accounting of the actions taken, and reimbursement for those actions.

Organization involves not only people, but also procedures and systems. Those who will be responsible for financial accountability and methods must be determined. The identification of those people within the organization who will be responsible for financial matters during the spill must be made. Those designated should also be trained. Training should include field experience in cleanup operations to understand terminology and prevent miscommunication. If no one in the organization can fill that role, consideration should be given to contracting those services to a professional accountant or consultant for larger spills. If the contracting route is taken, the need for familiarization with the organization still exists.

With the needed people designated, the next step will be to choose a system to be used. For a small spill, the cleanup manager (contractor, OSC, or spiller representative) can adequately account for actions and costs if there is limited response to one location. For a larger response, there must be an organized system in place. This system can consist simply of preprinted forms and a checkbook or of a more sophisticated computerized spreadsheet program integrated with a payroll accounting and disbursement system. The extent of the system needed depends upon capabilities (contractor), liabilities (spiller), and possibilities (OSC). With the advances over the past decade in personal computers and user-friendly software, the adaptability of such a system is not only feasible, but also more economical in many cases. The ability exists to input raw data (labor, equipment, time) and instantaneously make a record of costs incurred, data required for billing the contractor, data needed for payrolls, and the extent of involvement and costs of subcontractors. The federal requirement to substantiate daily costs in this case is much easier as is the management of equipment and labor.

The meshing of a system with people to make a viable organization takes training. Familiarization with the equipment and software to be used in cost accounting is imperative and is most easily accomplished if the same system is used in the daily operation of the organization. Use of the system for small spills for training purposes will prepare the contractor for a large spill.

There are other things that can and should be done before the spill. For the contractor, the proper pricing of materials and labor to include various levels of overhead is necessary. In a “Time and Materials” contract such as this, most of the profit will be made based on the labor used, equipment rented, and material sold. Any add-ons to subcontractors’ charges will usually only cover overhead expenses. Another part of planning treats seed money to make payroll and to pay subcontractors in a timely manner. Some companies may have enough cash to work for a few weeks, but many do not. It would be wise to shop the financial institutions for a line of credit to be made available upon the assignment of a cleanup contract. The availability of cash to make payrolls and pay subcontractors not only protects reputations, but allows the firm to take advantage of prompt payment discounts, which could pay the interest on the line of credit. Although interest paid is not generally a reimbursable expense, it should be factored into estimated overhead. If dealing with government contracts, the ability and mechanisms for electronic transfer of payments should also be in place before the spill.

Once the organization for a major spill response is in place, contracts should be negotiated. For a contractor, these contracts should include clients (government, product carriers, facilities, etc.) as well as providers (subcontractors providing labor, services, equipment, and materials). Government cleanup contracts are generally called Basic Ordering Agreements (BOAs), which are time and material
services contracts administered by the Coast Guard. This type of contract complies with the Federal Acquisition Regulations (FAR), and preference is given to those contractors who have entered into a BOA. This contract is specific in many of the otherwise “gray” areas of payment and compensation. Although contracting officers have latitude in administering parts of the contract, it is extremely important that a contractor and the OSC read, understand, and follow the contract. Although this type of contract follows a standardized form, deviations can be negotiated with the contracting officer. If situations arise during the response that are not covered by the BOA, all changes must be negotiated with the contracting officer and agreed to in writing. Anyone in the organization who directs the expenditure of personnel or materials must be familiar with the contract.

This point in planning is also the time to enter into subcontracts or agreements with providers of labor, materials, and services. During the spill, there is little time to locate or negotiate for these services. The ability to have larger response capability based on subcontracts or materials must be familiar with the contract. A major concern of any business today is insurance. Most contracts for services require providers to be insured against various risks. It is imperative that a flexible working relationship exist with an underwriter to provide coverage over such a dynamic response. The insurance should cover workers, equipment, and liability, and should be flexible enough to encompass probable scenarios.

During the spill

When a major spill occurs and a response is required, several decisions must be made prior to the cleanup of the oil. First, the appropriate level of response must be ascertained. This decision should be made by the OSC or responsible party, often relying on the contractor’s judgment. Accurate records should be kept of all equipment and services requested. The planning described above will now begin to pay off: the contractor can concentrate on the particulars of the spill instead of attempting to put an organization together. The accountability of the organization is placed immediately. The plan can then be modified. If all workers are notified, short-term financing is arranged as needed, and many other tasks can be accomplished while the cleanup manager is en route to survey the spill site.

Most spill responses last a few hours to less than a month. Mitigation of the harmful effects of the spill requires quick and decisive action. Because of adequate planning, the manager can now become a technician to attack the problem. As a solution becomes evident, the technician will become the manager, directing or recommending actions to be taken. It is extremely important that all parties document their activities thoroughly.

Documentation can and should take many forms. A chronological log of events should be kept by all supervisory personnel. A small tape recorder is useful in making verbal notes until a written record is made. Any verbal agreements made should be recorded in the log, and if possible, should be initialed by all parties involved. Other methods of documentation should be considered, including video, still cameras, time cards, inventory control forms, and other forms developed to improve record keeping. The advent of the small video camera brings record keeping into a new dimension. A video record of daily activities can provide documentation of personnel and equipment in use and is a valuable communication tool allowing those that cannot be on scene the ability to make informed decisions. A spill involving several sites could be surveyed by the contractor, OSC, and spillers via video recordings, allowing for a response based on visual as well as written communication. The record should be catalogued and secured for reference during the cost recovery phase.

At the end of each day, all parties should meet and verify the actions taken that day and all costs incurred. Plans for the next day’s activities and any changes in services to be rendered should be made. For a federal spill, the contractor is required to provide the OSC with a daily accounting of all services provided. The OSC must also keep a record of all costs and compensation of services. The use of a personal or portable computer with a spreadsheet program formatted to the particular equipment and services available will not only provide an accurate and instantaneous cost estimate on a daily basis, but also a neat and professional invoice that, when verified by the OSC, will speed up payments by the contracting officer. Any services or materials ordered by the OSC or spillers outside of negotiated contracts require an order number and approval by the contracting officer. Once the invoices are verified, a request for partial payment can be made and those invoices can be submitted (in accordance with the BOA) for payment. If cash flow is a problem, an advance payment may be authorized by the contracting officer under certain circumstances.

The course of action has been determined and forces are in place to mitigate the spill, and the technician has returned to being a manager. As in any industry, many different philosophies exist concerning how the cleanup business should be conducted. The philosophy of “get it all while the getting is good” makes for good short-term contracts, but an efficient, effective, and economical approach will provide future opportunities for business. Attempts to pad the labor force with numbers as well as profit costs will boost profits but raise questions concerning future work. All recognize that cleanup contractors have payrolls and overhead expenses between spills and that they are expected to make a reasonable return for their effort and preparation, but the contractor also has a responsibility to his client to ensure that the effort is directed toward spill mitigation rather than profit maximization. The OSC likewise has a responsibility to ensure monies are properly spent. After the initial rush at the start of the cleanup, the spill manager must be sensitive to unnecessary and especially nonreimbursable expenses that will most likely be paid out of the expected profit. Again, the business philosophy adopted by the contractor will dictate the attitude toward cost control. Each choice (spend or control) will eventually affect the reputation and future of the company.

Management of subcontractors requires experience and demands the attention of the contractor as well as the OSC. Subcontractors are themselves contractors who in many cases are not familiar with oil spill response or with working under government contracts such as a BOA. All subcontracts issued by a contractor under the BOA must be approved by the contracting officer. The easiest way to specify performance is to require the subcontractor to comply with the provisions of the BOA at negotiated rates for the services. Realistically, there will probably be a reluctance on the part of small subcontractors to comply with a 40-page government contract backed by more than 200 pages of Federal Acquisition Regulations (FAR). Again, experience with adaptable “standard” contracts implementing the major provisions of the BOA will most likely satisfy both the subcontractor and the contracting officer without unnecessary delay. Any contracts should clearly state the liability of subcontractors and contractors and the requirements of insurance against equipment damage and personnel injury. Because the contractor must provide daily accounting, the subcontractor must provide the same to the contractor. If possible, at least partial payment should be made to small subcontractors on a regular basis.

The contractor is considered a professional and as such is expected to advise the OSC and initiate responses to mitigate a spill. This advice must be balanced by considerations of both effectiveness and cost when dealing with public or limited funds. Any changes in the plan of attack must have the OSC’s approval, not only so the OSC can coordinate activities, but to ensure that the contractor will be paid for authorized services. When equipment is purchased for response action, that equipment belongs to the party who pays the final bill. If the response is federal, the pollution fund (311 k) owns the equipment and the Coast Guard is custodian. When the spiller reimburses the fund, the equipment is then transferred to the spiller. If the contractor purchases a chain saw, for instance, he is responsible for turning that equipment over to the OSC at the end of the spill. Failure to do so may result in denial of payment by the contracting officer. It is therefore extremely important to the contractor to review all purchases to the OSC at the end of the spill. If equipment is not usable and requires disposal, concurrence and approval by the OSC (supported by photos, appraisal, etc.) will avoid future denial of claims.
months later when memories begin to fail. If equipment purchased can be used for future spills, a contractor can negotiate for the purchase of equipment at a discount. For instance, the $300 chain saw used 10 days on a spill, which normally rents for $35 per day, may be negotiated so that the contractor is paid $200 for use of the chain saw and is allowed to keep the equipment, giving the contractor a piece of useful equipment for only $100. In many cases, neither the OSC nor the spiller have any desire or need for specialized equipment that the contractor can use on other projects, and therefore it is advantageous to all parties to dispose of equipment in this manner.

Other changes will occur as the spill changes from an emergency response to a routine, planned cleanup. Although a contract may exist, it is always open for negotiation. In the case of a piece of equipment that costs $500 and rents for $50 per day, the contracting officer may wish to renegotiate continuing rental costs to a lower rate after 10 days of use. As the spill response phases down, subcontracts are terminated and settled, recovered product and contaminated equipment is disposed of, equipment no longer used is cleaned and returned, and full accounting of materials, labor, and services rendered is made. All terminations of subcontracts should be made in writing to ensure understanding by the subcontractors and full payment by the contracting officer. Equipment purchased should be accounted for and safeguarded. Disposal arrangements with the OSC concerning the equipment should be documented. It is to the advantage of the contractor for the OSC to accept transfers of the excess purchased equipment (with the transfer documented) to ensure payment for the equipment and to relieve the contractor of responsibility for it. The contracting officer has the option of denying payment for equipment that was purchased and “disappears,” such as a tool kit that went home with one of the laborers.

After the spill

The spill has been declared cleaned by the OSC, state, and federal agencies. Everyone congratulates each other, exchanges business cards, and heads home. Right? Wrong! Particular attention to this phase by the contractor will determine whether prompt and equitable reimbursement is made for his effort. At the termination of the contract, the contractor must in turn terminate all subcontracts and inform the contracting officer and OSC of expected expenditures that will occur during this phase. Such expenditures include the return transportation of equipment, restoration of damaged beaches and structures, and the cleaning of equipment used to collect oil. Any damage to the equipment of the contractor and subcontractor should be thoroughly investigated and documented for claims against the insurance policy.

As it was important to maintain close liaison with the OSC during the spill, it is imperative that the OSC and contracting officer concur on actions taken that will be reimbursable. It would be very convenient for the contracting officer to state the spill ended at a particular time on a particular date and all expenditures after that time, unless specifically approved, are not payable. As always, it is the responsibility of the contractor to ensure that actions are approved and documented.

Activities after the spill can be very expensive and require careful analysis of projected costs and alternatives. Since an emergency no longer exists, payments for actions approved during the active phase may face resistance during this phase. In the cleanup of equipment, prices fixed in the BOA may not be adequate. Alternatives developed and negotiated with the contracting officer may not allow all costs to be recovered, but they may be more desirable than accepting BOA rates or risking the incurring of nonreimbursable costs.

After all of the accounting is finished, bills paid, and payment received, an analysis of the management of the spill organization should be made. Key points to consider are the actions of those in supervisory positions, the strengths and weaknesses of the financial management system, and the communications among the OSC, contracting officer, and contractor. For the contractor, the amount of profit made must be determined. This amount may seem adequate or more than adequate until such factors are considered as the damage and depreciation of equipment used, including the eventual replacement costs, and overhead expenses between jobs. Careful analysis of labor rates, equipment rental charges, and overhead costs should be made and carefully documented. If a “reasonable” profit has not been made, negotiations to change the rates should be opened using this spill response as evidence of the need to change the BOA or contract. With this information in hand, begin the financial planning process again for the next spill response.

Conclusions

Oil spill responses can be extremely satisfying from the perspective of protection and restoration of the environment after an oil spill. They are challenges not only for the spiller and regulatory agencies, but also for contractors in the cleanup business. This paper has presented common sense ideas elaborated by experience and requirements of federal contracting regulations. These ideas will not solve all the financial management problems of an oil spill nor will they ensure a profit for the contractor. The result of proper financial planning and management will be the ability to concentrate on the problem of the spill, rather than on the myriad other problems generated by management’s failure to be prepared.