

COMMENTS on the DRILLING CONTRACT

Need for Complete Well Specifications

WHEN ASKED to submit a bid for the drilling of a well, the contractor, in order to intelligently and accurately estimate his cost, should be furnished with complete specifications as to the work to be done, the equipment to be furnished, and the practices to be followed by the operator.¹ Failure to obtain full information in the outset frequently results in erroneous calculations, and subsequent misunderstanding.

For example, if operator (intending to require special blowout preventer set up, i.e., three blowout preventers and high substructure) makes only a generalized requirement as to such equipment, and contractor—on the basis of past experience with other operators—erroneously assumes that dual blowout preventer equipment and low substructure will suffice, contractor's price will omit a material and substantial element of cost.

Later, when operator requires such equipment, contractor may even have to purchase it; and of course, contractor takes a loss under the price submitted; or, operator must make allowance over and above the original footage price tendered, which is unsatisfactory, in either event. Moreover, such a result undermines the essential equity of competitive bidding, because the lowest bidder—who actually figured on operator's real specifications and was able and willing to comply therewith—was not awarded the contract.

Failure of the operator to furnish—or of contractor to obtain—full and complete information, precludes a "meeting of the minds";² and defeats the first requisite of a contract, namely, a mutual or bilateral understanding.

It is, therefore, respectfully submitted and recommended that operators would do well to set up a uniform and complete submittal form which would give each contractor who bids on a job a full disclosure of all specifications as to equipment, per-

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formance, and relevant operating practices before the bids are actually taken.

Importance of Knowing Terms of Contract in Advance

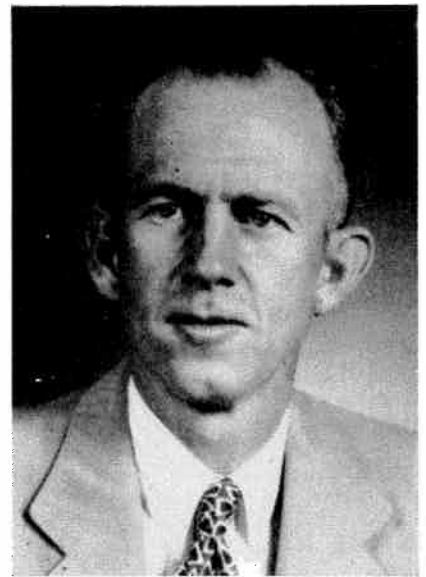
It frequently develops that the successful bidder never learns of the detailed provisions of the contract until after his bid has been accepted and the contract awarded. When the written contract is tendered to contractor for execution, he has the first real opportunity to determine the nature of the basic contract provisions.³ A few operators are now following the practice of requiring the submission of bids on the basis of their own contract forms, which have been fully filled out and relate to the well to be drilled.

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This practice is highly commended, as it informs the contractor of all⁴ pertinent information, and when the operator receives the bid, he may reasonably assume that contractor is able and willing to comply with the terms of the contract, unless contractor's bid is otherwise specifically and expressly conditioned. The foregoing prac-

³ The contract itself may be so general in its terms that it does not clearly disclose what operator expects, particularly with regard to field practices. In many cases, closer cooperation and better results would ensue, where circumstances permit contractor's field superintendent to contact operator's superintendent and discuss such field practices in advance.

One matter with which contractor should familiarize himself in advance, is the accounting practices followed by operator's representative, i.e., with regard to the point at which day-work operations begin, and end. For instance, does the coring operation begin when the contractor leaves the bottom of the hole to withdraw the drilling bit; or when he starts in the hole with the core bit; or at some intermediate point, based on the condition of the bit? Many other examples could be cited—where different operators follow different practices, and yet the practice to be followed has a bearing on the contractor's determination of cost. The practices should be known in advance.



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tice tends to avoid misunderstanding and to eliminate the necessity for subsequent negotiation of important elements of the contract, after the contract has been awarded, and the work is in readiness to proceed.⁵

Checking the Terms of the Drilling Contract

(1) IN GENERAL

Whether the contractor reviews the terms of the agreement before submission of his bid, or after having been awarded the contract, the necessity for checking the terms of the agreement are altogether obvious. In point of fact, the terms of the contract may have much more to do with contractor's success or failure, from a financial standpoint, than the footage price and day rates themselves, as larger values are at stake. However, although the matter of checking the contract should—because of its repeated recurrence—have crystallized into a routine practice, common experience indicates the prevalence among contractors of a laxness and complete absence of method, that is inexplicable in view of the vital importance of this procedure.

The contract is almost invariably prepared by the operator's representative. More frequently than not, the actual transcription or preparation of the agreement itself is regarded as a routine or perfunctory matter. In many cases, a clerk or secretary (not conversant with all the facts, nor apprized of the lengthy telephone conversations that have preceded awarding the contract) fills in a few blanks of a printed form, upon scanty advice from the belabored production superintendent, or chief clerk, who received and checked the various bids submitted. If a lawyer drafts the contract, he frequently has inadequate information on which to proceed.

Of course, all contractors check such items as the footage price and day rates

⁵ The writer is fully conversant with the fact that the precise procedure here recommended will not be adaptable to all circumstances, but it is regarded as good practice, where the circumstances do permit its application.

¹ Of course, where the contractor is dealing with an old customer whose practices and policies are well-known—or on successive wells in the same general area—much of the detail referred to can be dispensed with, but not otherwise.

² This is the phrase used by lawyers to describe one of the essential elements of an enforceable contract. It is just as important to the contract as the consideration itself.