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MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No. 2064 Press / Mis.

Dated 25-6- 1907.

Not to be folded or roughly handled

Proceedings of the Madras Government, Public Works Department, 25th June 1869.

No. 555. Read the following letter from the Superintending Engineer, 6th Division, to the Secretary to Government, Public Works Department, dated Tanjore, 7th June 1869, No. 292:—

With reference to G. O., No. 245, dated 27th January 1869, which was accompanied by a form of Contract Bond, and which directs that that form shall in future be strictly adhered to, I have the honour to observe that in G. O., No. 960, dated 8th July 1865, Superintending Engineers were exclusively authorized to execute contracts on behalf of the Secretary of State for India, but in the form which accompanied G. O., No. 245, the Superintending Engineer does not appear.

2. Under the Contract Bond it would appear that the Contractor is bound to pay a certain penal sum, as liquidated damages, should he fail to execute his contract; but it does not provide that security shall be obtained from the Contractor. As works of a petty nature are executed by contract, and the Contractors are often men of no property, it is quite possible that a defaulting Contractor would be unable to make good the penal sum.

3. Again, it would appear from the form of contract, that until the contract time has elapsed the liquidated damages cannot be recovered, and no provision is made to enable the Superintending Engineer or Executive Officer to take the work out of the Contractor's hands, supposing it were found that the Contractor was making no effort to complete the work within the period specified. In districts in which the actual working season in river beds is so short, as in the delta districts, works might be delayed for a season, and Government be put to very considerable loss owing to a defaulting Contractor failing to supply material or to excavate a channel within the prescribed period, and if the work were undertaken independently of the Contractor before the period had elapsed within which he was bound to execute or complete it, no liquidated damages could, I presume, be recovered, so that the adoption of the form of contract, so far from protecting the interests of Government, would, in the case of petty contracts, be very detrimental to their interests; it appears, therefore, necessary that the form should be modified, so as to provide for security being afforded, (if only to ensure the recovery of the penal sum,) and for the introduction of a clause which would admit of the contract being taken from the Contractor, if it became clear that he was making no effort to carry out his contract, and that the work could not possibly be completed within the specified period.

4. If a simple form of contract, embodying these provisions, were drawn up by the Government Solicitor, and printed in Tamil, and if Officers in charge of Treasuries were directed to stamp such forms, according to the amount of the contract, when called upon to do so by the Range Officers, a great deal of work would be taken from the Range Offices, and there would be a certainty that the contract deed was properly drawn up.

5. If the form of Contract Bond is to be adhered to, I would be glad to know, should a Contractor fail, whether work to the amount executed should be paid for, and the amount of liquidated damages recovered through the Civil Court, or whether it may legally be deducted from any sum due to the Contractor for work executed. Also, if the amount specified, as that of liquidated damages, were deposited by the

Contractor, whether that sum could be legally appropriated in the case of the Contractor failing to fulfil his contract, or whether the recovery of the amount of the liquidated damages must be made through the Civil Court. Also, if a clause relative to taking the work out of a Contractor's hands, if he were obviously making no effort to complete the work, were introduced, whether the liquidated damages could be recovered in full, if so provided in the contract; if not the Government, in most important cases, would not be able to recover any thing from a defaulting contractor.

No. 556. ORDER THEREON, 25th June 1869, No. 2,064.

ESTABLISHMENT, No. 73.

ADVERTING to paragraph 1 of this letter, the Government observe that the Contract Bond circulated with G. O., No. 245, of the 27th January 1869, differs very slightly from that appended to Chapter XVI. of the Code, and is intended to serve merely as a form for the guidance of Superintending Engineers who alone, under the Orders of the 13th July 1865, No. 1,983, are authorized to execute contracts on behalf of the Secretary of State for India.

2. The questions raised in paragraphs 2, 3, and 5 are sufficiently provided for in the Chapter of the Code above quoted, to which Captain Oakes's special attention will be drawn. The stipulations necessary for the protection of the interests of Government in the case of a contract work should be appended to the specification, which forms the basis of the contract and is specially referred to in the bond.

(True Extract.)

(Signed) CHARLES A. ORR, Colonel, R. E.,
Secretary to Government.

To the Superintending Engineer, 6th Division.

Exd. S. T. Augustin.

Supt. Engineer's Mem. &c.

Paniore - 7th June 1869.

No. 292

From

Captain R. F. Oakes R.E.
Supt. Engineer 6th Div.

To

Colonel C. A. Orr R.E.
Secretary to Government
M.P.W.

Sir,

With reference to G.O. No. 245 dated 27th January 1869 which was accompanied by a form of Contract Bond, of which directs that that form shall in future be strictly adhered to, I have the honor to observe that in G.O. No. 1960 dated 8th July 1865 Superintending Engineers exclusively authorized to execute Contracts on behalf of the Secretary of State for India, but in the form which accompanied G.O. No. 245 the Supt. Engineer does not appear.

2 Under the Contract Bond it would appear that the Contractor is bound to pay a certain penal

sum.

sum as liquidated damages, should he fail to execute his Contract, but it does not provide that Security shall be obtained from the Contractor As works of a petty nature are executed by contract, & the Contractors are often men of no property it is quite possible that a defaulting Contractor would be unable to make good the penal sums.

3. Again it would appear from the form of Contract that until the Contract time has Elapsed the liquidated damages cannot be recovered, & no provision is made to enable the Sup.g Engineer or Executive Officer to take the work out of the Contractors hands, supposing it were found that the Contractor was making no effort to complete the work within the period specified.

In Districts in which the actual working season in river beds is so short as in the Delta Districts, Works might be delayed for a season, & Govt. put to very considerable loss owing to a defaulting Contractor failing to supply material or to excavate a Channel within the prescribed period & if the work were undertaken indipendently of the Contractor before the period had elapsed within which he was bound to execute or complete it, no liquidated damages could, I presume, be recovered, so that the adoption of the form of Contract, so far from protecting the interests of Government, would, in the case of petty contracts, be very detrimental to their interests; it appears therefore

necessary

necessary that the form should be modified so as to provide for security being afforded if only to ensure the recovery of the penal sum & for the introduction of a clause which would admit of the contract being taken from the Contractor, if it became clear that he was making no effort to carry out his Contract, & that the work could not possibly be completed within the specified period.—

4. If a simple form of Contract, embodying these provisions, were drawn up by the Govt Solicitor, & printed in Tamil, & if Officers in charge of Treasuries were directed to stamp such forms according to the amount of the Contract when

when called upon to do so by the Range Officers a great deal of work would be taken from the Range Officer, & there would be a certainty that the Contract deed was properly drawn up.—

If the form of Contract Bond is to be adhered to, I would be glad to know, should a Contractor fail, whether work to the amount expended should be paid for, & the Amount of liquidated damages recovered through the Civil Courts or whether it may legally be deducted from any sum due to the Contractor for work Executed. Also if the amount specified as that of liquidated damages were deposited by the Contractor whether that sum could be legally appropriated, in the case of the Contractor failing

to

to fulfil his contract, or whether the recovery of the Amount of the liquidated damages must be made through the Civil Court. - Also, if a Clause relative to taking the work out of a Contractor's hands, if he were obviously making no Effort to complete the work, were introduced whether the liquidated damages could be recovered in full, if so provided in the Contract; if not the Government in most important Cases would not be able to recover any thing from a defaulting Contractor.

I have the honour to be
Sir.
Your most obedient Servant
W. Yates Capt R.E.
Supt Engr 6th Div.

P. W. 1869 Dept.
From Govt of Madras for June 69
The Supg Engineer
6th Dn.

To Rte 2401.
The Secy to Govt
P. W. D.

Dated 7/33 June 1869.
Rec'd 9

No 292.

Proposing certain modifications in the form of Contract Bond circulated with G.O. No 245, dated 27th January 1869.

No 555

No 2064 - 25 June 69.

Ansd 16th June 1869 - Ch. 17th

P. W. Dept.

No 2064

Proceedings of the Madras Govt.
Under date the 25 June 69.
Read the following

From the Supg Engr. 6th Dn. No 292 dy June 69.

Adverting to para 1 of this letter, the Government observe that the Contract Bond circulated with G.O. No 245 of the 27th January 1869 differs very slightly from that appended to Chapter XIII of the Code, and is intended to serve merely as a form for the guidance of Supg Engineers who alone, under the orders of the 13th July 1865, No 1983 are authorized to execute Contracts on behalf of the

Secy:

Rec 2401 13

Govt. of {1869} Madras.

PUBLIC WORKS.

To The Superintending Engineer
6th Division

Dated

Recd. Encl.

G. O. 25 June 1869, No. 2064

Nos. 555-556

Decy Contract. Papers enclosed in the letter from the Secy Govt submitting his observations with reference to the form of a Decy Contract circulated with Govt Proc 24 May 1869.

Secretary of State for India.

The questions raised in paras 2, 3 and 5 are sufficiently provided for in the Chapter of the Code above quoted, to which Capt. Oakes' special attention will be drawn. The stipulations necessary for the protection of the interests of Government in the case of a Contract work should be appended to the Specification which forms the basis of the Contract and is specially referred to in the Bond.

6 To Supt Engr 6th Dn
17
Dec 28/69