

(1) Number of pages _____

(2) Date of repair _____

(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No. 2064	Press
555-55	Mis.
Dated 2.5.6	18.7

Not to be folded or roughly handled

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

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

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.

No. 292

Madras - 7th June 1869

Captain C. P. Oakes R.E.
Superintending Engineer
Colonel C. A. Orr R.E.
Secretary to Government
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. 1983 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.

him 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 sum.

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 Super 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

actual working season in river bed is so short as in the Delta Districts, Works might be delayed for a season, & Govt. be 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 independently of the Contractor before the period had elapsed within which he was bound to execute or complete it, no liquidated damages could 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

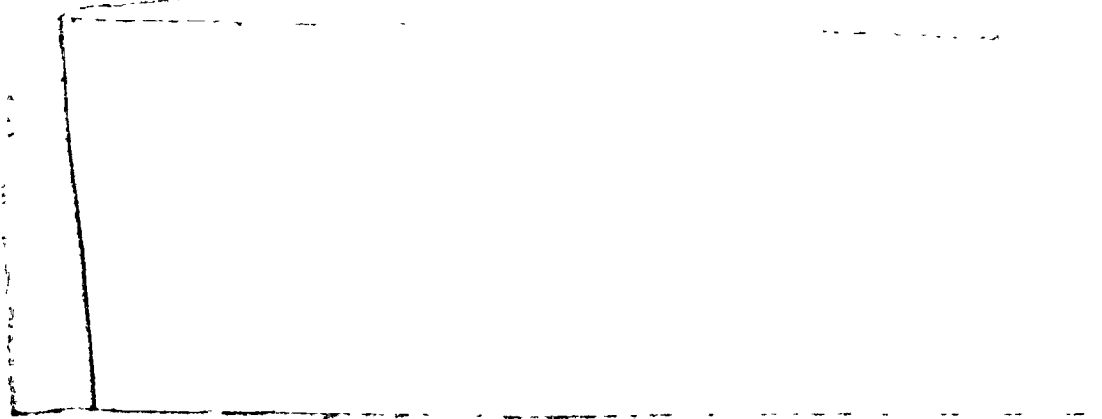
necessary that the form should be modified so as to provide for security being afforded, if only to ensure the recovery of the penal sum $\frac{1}{2}$ for the introduction of a clause which would admit of the contract being taken from the Contractor, if it became clear that he was making no effort to 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 *Journal*, & 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 Public Officers a great deal of work would be taken from the Public Office, & there would be no certainty that the contract deed was properly drawn up. If the form of contract should be adhered to, I would be glad to know should a Contractor fail, whether work to the amount executed 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 intro-
duced, whether the liquidated damages
could be recovered in full, if so
provided in the contract; & if not
the Government is most important
cases would not be able to
recover anything from a default-
ing Contractor.

I have the honor to be
Dear Sir,
Your most obedient servant
Wm. A. Carter
Superintendent of the
Public Works of the District of Columbia



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P. 4. 1869 Dept.
To Secy of Public Works
The Chief Engineer
6th June
To - No 2401.
The Secy to Govt
S. W. D.

Dated 7th June 1869.
Recd 9th

No 292.

Proposing certain modifica-
tions in the form
of Contract Bond
Circulated with G.O.
No 245, dated 27th
January 1869.

No 2064-25 June 69.

4555

2. 16th June 1869 Ch. 174

P. W. Dept.

No 2064

Proceedings of the Madras Govt.
under date the 25 June 69.
Re. the following

From the Superint. of W. (H. No 292 of 7 June 69)

W. M.

Adverting to para-
1 of this letter, the Govern-
ment observe that the Con-
tract Bond circulated with
G. O. No 245 of the 27 Jan'y
1869 differs very slightly
from that appended to
Chapter IV of the Code, and
is intended to serve mere-
ly as a form for the
guidance of Superintendents
who alone, under the order
of the 13th July 1865, No 1983
are authorized to execute
Contracts on behalf of the
Secy.

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 at-
tention will be drawn.
The stipulations necessary
for the protection of the
interests of government
in the case of a Contract
work should be append-
ed to the Specification
which forms the basis
of the Contract and is
specially referred to in
the Bond.

Approved by the Secretary of State for India
on 24th June 1869.

To Mr. Oakes
14
Dep. Secy 25/6/69

Dec 2401

Court of 1869 Madras.

PUBLIC WORKS.

The Superintending Engineer
6th Division

Dated

1869

G. O. 25 June 1869, No. 2064

Nos. 555-556

Recd of Contract. Copy of order in
the letter from the Superintending
Engineer submitting his plan.
- contains with reference to the
form of a ready Contract in
- enclosed with June 24 57 1869.