

Handwritten notes on the left page, including "A. E. L." and "The B. M. B. Co. General".

M.C. No 6794
Govt. of (1882) Madras.
REVENUE.

No 2620 w dt 9 October 82
B

Communicated to
Officers of the P.W. Dept-
for information and
guidance. B

Cu 6-10-82

Encl no. 2
No 6/10
20.10

Order, dated 15th September 1882, No. 984.

No 2620 w dt 9-10-82
1/10

Supdt Engrs ✓
Commr. Archt. to Govt ✓
Genl Supt P.W. W. & S. ✓
Supt Engr. H. W. W. ✓
Supt P. W. ✓

Recd 10/10/82

Schedule Contract.—Board's view that a —
is an agreement and is liable to stamp duty, con-
curred in and communicated to the Public
Works Department.

Entd. in Receipt Repr.
with order

Cu: 28/9 R4/10

CONDITIONS OF A SCHEDULE CONTRACT

for

A bill will be submitted by the Contractor each month for all work executed or stores supplied in the previous month in accordance with the terms of the Specification, and the Executive Engineer will take the requisite measures for having the same tested, and the claim, as far as admissible, adjusted if possible before the expiry of ten days from the presentation of the bill.

2. No work or stores will be paid for unless thoroughly good and fully in accordance with the Specification, and should, through inadvertence, bad work, or stores be passed and paid for, it will nevertheless be perfectly competent for the Executive Engineer to strike the same out of the account at any future time, and recover the value at any date previous to, or at the time of, granting the final certificate.

3. The bill above alluded to will be submitted in exact accordance with the form supplied by the Executive Engineer, and the rates at which the value of the work or stores is calculated will be those tendered for and accepted and entered in the attached schedule. To allow of a guarantee fund being formed on the part of Government, a deduction of 5 per cent. from all payments to the Contractor is to be made by the Executive Engineer at the time of payment.

4. The Executive Engineer is fully empowered to devote all, or such portion as may be requisite, of this guarantee or reserve fund to making good, bad, or indifferent work on the part of the Contractor in such manner as he may think desirable.

5. Similarly, should over-payments have been inadvertently made on the faith of the Contractor's bill, although checked by the Executive Engineer or his authorized representative, it will be competent for the Executive Engineer to recover the same from the Contractor either by deducting the amount from any account subsequently rendered, or from the guarantee fund.

6. The Contractor is bound to adopt any alteration or addition to the original design, which the Executive Engineer may direct in writing, and execute the same at the same rates as the other portions of the work. He must also at once undo and make good any work which may be pronounced bad, or not in accordance with the Specification.

7. Failing within ten days to conform to the instructions of the Executive Engineer in either of the above cases, that officer has power to execute the work by any agency he may consider desirable at the risk and cost of the Contractor, using, if necessary, any plant or materials which may be collected at site, and paying for the same at his own valuation.

8. Should the Executive Engineer consider that work, although not executed in strict accordance with the Specification, may be allowed to stand, he is empowered to pay for the same at such reduced rates as he may fix, and similarly, in the case of inferior stores supplied, which though not of the quality required by the Specification may yet be passed, he is also empowered to pay for the same at such reduced rates as he may consider equitable. This proceeding is, however, quite optional on the part of the Executive Engineer.

9. The Contractor is bound to provide all requisite plant and thoroughly intelligent agency for the execution of the work, failing in which the Executive Engineer is empowered to supply such machinery or agency (either superintendence, skilled or unskilled labor) as he may consider desirable at the cost of the Contractor, removing such as he may object to.

10. Advances may be made to the Contractor to the extent of 80 per cent. of the value of all materials (as assessed by the Executive Engineer) deposited at site and mortgaged to Government, the amount of all such advances being recovered as the materials are utilized, or from the bill for completed work, subsequently submitted.

11. All rejected materials will at once be removed from site by the Contractor to such distance as may be desired, failing in which the Executive Engineer is empowered, after giving ten days' notice in writing, to do so himself, recovering the cost of the same from the Contractor.

12. No unsightly pits, refuse stores, or other disfigurements will be allowed to remain in the neighbourhood of any completed work, and, should the Contractor not comply with the instructions of the Executive Engineer to rectify such defects, that Officer may, after ten days' notice in writing, take such measures for their remedy as he may consider desirable, charging the cost of the same to the Contractor.

13. The Contractor is obliged to conform to all the legitimate instructions of the Executive Engineer in respect to the above conditions, or such other matters as may affect the safety of the work, failing in which that Officer is empowered, after giving ten days' notice in writing, to take the work entirely into his own hands, declaring the contract cancelled, and employing, if necessary, any materials or plant belonging to the Contractor, which he may consider requisite, paying for the same at his own valuation.

14. The Executive Engineer is similarly empowered to annul the contract should he consider that there has been unnecessary delay on the part of the Contractor in attending to or carrying out the instructions relative to the prosecution of the work or in the supply of stores. In the event of the contract having to be cancelled through non-fulfilment of any of the conditions on the part of the Contractor, the ~~Executive Engineer is empowered to enforce as a penalty the forfeiture of the~~ *amount of such deposit as may be necessary* ~~guarantee fund or other security deposited by the Contractor shall be & remain the property of~~ *Government in or towards satisfaction of any loss sustained by Govt by reason of such breach of contract.*

15. No portion of the reserve or guarantee fund can be demanded by the Contractor till such time as the Executive Engineer grants a certificate of completion of the terms of his contract; but in cases of contracts extending over 12 but not less than 18 months the reserve may be paid to the Contractor in the last month of the official year (provided the contract has been in force not less than six months) under the following conditions:—1st, that the Contractor has completed the terms of his contract both as regards quantity and quality of work performed or stores supplied; and, 2nd, that such payment is not to be considered as a final adjustment of the accounts to date, or to invalidate any of the terms or conditions of the contract.

16. When two or more persons combine to take up a contract, it will be absolutely necessary for them to appoint some one person (either partner or otherwise) to be their accredited agent, and to give him powers of attorney to receive payments on account of the work contracted for and to grant receipts; this power of attorney to be lodged in the hands of the Executive Engineer. In the event of one or more of the partners in the contract wishing to withdraw this power of attorney and to transfer it to some other person, he or they must give one month's warning of this in writing to the Executive Engineer, who may on the receipt of such warning consider himself at liberty at any time within the month to declare the original contract null and void, precisely under the same conditions as for non-fulfilment of work, &c., and thereon, *i.e.*, after giving ten days' notice in writing, take over the work and materials on the part of Government, making such arrangements for its progress as above provided in paragraph 7 of these conditions.

17. The final adjustment must invariably be preceded by a thorough re-measurement of the whole of the work performed, which will be made by the Executive Engineer or his authorized representative, and at which the Contractor or his accredited agent must be present. For this purpose a written notice will be sent to him at least ten days before the date fixed for the measurement, appointing the day, hour, and place of meeting. Should he not attend to this, the measurements will proceed without him, and ~~he will be precluded from making any protest.~~ *conclusively binding upon him.*

18. The Contractor will furnish, free of charge, all labor and tools required for such examination of the work as the Executive Engineer at any time considers desirable; failing which he may have this done at the Contractor's cost, deducting the charges incurred from his bill.

19. When a dispute arises between the Executive Engineer and Contractor as to either quantity or quality of any work performed, the matter will, at the requisition of the latter, be referred to the Chief Engineer, who shall be empowered to appoint an Officer or Upper Subordinate to measure and examine the work in the presence of the Contractor. Due notice, as in paragraph 17, will be given to the Contractor regarding the time and place of making these measurements, &c., and should he not be present or be represented by a duly accredited agent, the Chief Engineer may decide the case finally on the report furnished to him by the Departmental Officer deputed as above; any objections to the measurements taken, &c., must, moreover, be stated to the deputed Officer at the time, and a copy of the same in writing forwarded to him for submission with his report to the Chief Engineer at latest within 24 hours.

20. The Contractor shall abide by the decision of the Executive Engineer in case of the occurrence of any dispute or difference (other than that provided for by paragraph 19) arising between him and the Executive Engineer or any officer subordinate to him in regard to the construction of any of the above conditions or to any other question proceeding therefrom and any and every such decision shall be final and conclusively binding on the Contractor and shall not be subject to question or review upon any ground whatsoever.

21. Paragraphs 4, 6, 7, 9, 10, and 12 are not to be considered as applicable in a contract for the supply of stores of any kind.

Not to be applicable in supply of stores.

22
24/6

2
Rev: 3820/82

SCHEDULE CONTRACT.

entered into between _____ and
 the Executive Engineer, _____ Division, on account of the
 Government of Madras.

*M. S. 2
6794/12*

inhabitant of _____ in the Presidency of Madras, do hereby undertake to execute
 and supply such works and stores as are enumerated and described in the attached Specification at the
 rates for each item entered in the Schedule thereto appended, such works and stores being on account
 of the _____

situated in the _____ Taluk of _____ and
 subject to the CONDITIONS printed at back;—also to complete and hand over the same in a satisfactory
 and workmanlike manner to the Executive Engineer or his authorized representative on or before
 the _____ day of _____ in the year of Christ one thousand
 eight hundred and _____

Signed sealed and delivered by the said
 this _____ day of _____
 in the year of Christ one thousand eight hundred _____
 and _____ in the presence of _____

*2
Rev 5026/02*

*Gul.
2360/02*

CONDITIONS OF A SCHEDULE CONTRACT

for _____

A bill will be submitted by the Contractor each month for all work executed or stores supplied in the previous month in accordance with the terms of the Specification, and the Executive Engineer will take the requisite measures for having the same tested, and the claim, as far as admissible, adjusted if possible before the expiry of ten days from the presentation of the bill.

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3. The bill above alluded to will be submitted in exact accordance with the form supplied by the Executive Engineer, and the rates at which the value of the work or stores is calculated will be those tendered for and accepted and entered in the attached schedule. To allow of a guarantee fund being formed on the part of Government, a deduction of 5 per cent. from all payments to the Contractor is to be made by the Executive Engineer at the time of payment.

4. The Executive Engineer is fully empowered to devote all, or such portion as may be requisite, of this guarantee or reserve fund to making good, bad, or indifferent work on the part of the Contractor in such manner as he may think desirable.

5. Similarly, should over-payments have been inadvertently made on the faith of the Contractor's bill, although checked by the Executive Engineer or his authorized representative, it will be competent for the Executive Engineer to recover the same from the Contractor either by deducting the amount from any account subsequently rendered, or from the guarantee fund.

6. The Contractor is bound to adopt any alteration or addition to the original design, which the Executive Engineer may direct in writing, and execute the same at the same rates as the other portions of the work. He must also at once undo and make good any work which may be pronounced bad, or not in accordance with the Specification.

7. Failing within ten days to conform to the instructions of the Executive Engineer in either of the above cases, that officer has power to execute the work by any agency he may consider desirable at the risk and cost of the Contractor, using, if necessary, any plant or materials which may be collected at site, and paying for the same at his own valuation.

8. Should the Executive Engineer consider that work, although not executed in strict accordance with the Specification, may be allowed to stand, he is empowered to pay for the same at such reduced rates as he may fix, and similarly, in the case of inferior stores supplied, which though not of the quality required by the Specification may yet be passed, he is also empowered to pay for the same at such reduced rates as he may consider equitable. This proceeding is, however, quite optional on the part of the Executive Engineer.

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10. Advances may be made to the Contractor to the extent of 80 per cent. of the value of all materials (as assessed by the Executive Engineer) deposited at site and mortgaged to Government, the amount of all such advances being recovered as the materials are utilized, or from the bill for completed work, subsequently submitted.

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12. No unsightly pits, refuse stores, or other disfigurements will be allowed to remain in the neighbourhood of any completed work, and, should the Contractor not comply with the instructions of the Executive Engineer to rectify such defects, that Officer may, after ten days' notice in writing, take such measures for their remedy as he may consider desirable, charging the cost of the same to the Contractor.

13. The Contractor is obliged to conform to all the legitimate instructions of the Executive Engineer in respect to the above conditions, or such other matters as may affect the safety of the work, failing in which that Officer is empowered, after giving ten days' notice in writing, to take the work entirely into his own hands, declaring the contract cancelled, and employing, if necessary, any materials or plant belonging to the Contractor, which he may consider requisite, paying for the same at his own valuation.

14. The Executive Engineer is similarly empowered to annul the contract should he consider that there has been unnecessary delay on the part of the Contractor in attending to or carrying out the instructions relative to the prosecution of the work or in the supply of stores. In the event of the contract having to be cancelled through non-fulfilment of any of the conditions on the part of the Contractor, the amount or so much thereof as may be necessary of the guarantee fund or other security deposited by the Contractor shall be and remain the property of Government in or towards satisfaction of any loss sustained by Government by reason of such breach of contract.

15. No portion of the reserve or guarantee fund can be demanded by the Contractor till such time as the Executive Engineer grants a certificate of completion of the terms of his contract; but in cases of contracts extending over 12 but not less than 18 months the reserve may be paid to the Contractor in the last month of the official year (provided the contract has been in force not less than six months) under the following conditions:—1st, that the Contractor has completed the terms of his contract both as regards quantity and quality of work performed or stores supplied; and, 2nd, that such payment is not to be considered as a final adjustment of the accounts to date, or to invalidate any of the terms or conditions of the contract.

16. When two or more persons combine to take up a contract, it will be absolutely necessary for them to appoint some one person (either partner or otherwise) to be their accredited agent, and to give him powers of attorney to receive payments on account of the work contracted for and to grant receipts; this power of attorney to be lodged in the hands of the Executive Engineer. In the event of one or more of the partners in the contract wishing to withdraw this power of attorney and to transfer it to some other person, he or they must give one month's warning of this in writing to the Executive Engineer, who may on the receipt of such warning consider himself at liberty at any time within the month to declare the original contract null and void, precisely under the same conditions as for non-fulfilment of work, &c., and thereon, *i.e.*, after giving ten days' notice in writing, take over the work and materials on the part of Government, making such arrangements for its progress as above provided in paragraph 7 of these conditions.

17. The final adjustment must invariably be preceded by a thorough re-measurement of the whole of the work performed, which will be made by the Executive Engineer or his authorized representative, and at which the Contractor or his accredited agent must be present. For this purpose a written notice will be sent to him at least ten days before the date fixed for the measurement, appointing the day, hour, and place of meeting. Should he not attend to this, the measurements will proceed without him, and will be conclusively binding upon him.

18. The Contractor will furnish, free of charge, all labor and tools required for such examination of the work as the Executive Engineer at any time considers desirable; failing which he may have this done at the Contractor's cost, deducting the charges incurred from his bill.

19. When a dispute arises between the Executive Engineer and Contractor as to either quantity or quality of any work performed, the matter will, at the requisition of the latter, be referred to the Chief Engineer, who shall be empowered to appoint an Officer or Upper Subordinate to measure and examine the work in the presence of the Contractor. Due notice, as in paragraph 17, will be given to the Contractor regarding the time and place of making these measurements, &c., and should he not be present or be represented by a duly accredited agent, the Chief Engineer may decide the case finally on the report furnished to him by the Departmental Officer deputed as above; any objections to the measurements taken, &c., must, moreover, be stated to the deputed Officer at the time, and a copy of the same in writing forwarded to him for submission with his report to the Chief Engineer at latest within 24 hours.

20. The Contractor shall abide by the decision of the Executive Engineer in case of the occurrence of any dispute or difference (other than that provided for by paragraph 19) arising between him and the Executive Engineer or any officer subordinate to him in regard to the construction of any of the above conditions or to any other question proceeding therefrom and any and every such decision shall be final and conclusively binding on the Contractor and shall not be subject to question or review upon any ground whatsoever.

Not to be applicable in
supply of stores.

21. Paragraphs 4, 6, 7, 9, 10, and 12 are not to be considered as applicable in a contract for the supply of stores of any kind.

Conditions of a Schedule Contract.

Rev. 3820/62.

SCHEDULE CONTRACT.

entered into between _____ and
 the Executive Engineer, _____ Division, on account of the
 Government of Madras.

inhabitant of _____ in the Presidency of Madras, do hereby undertake to execute
 and supply such works and stores as are enumerated and described in the attached Specification at the
 rates for each item entered in the Schedule thereto appended, such works and stores being on account
 of the _____

situated in the _____ Taluk of _____ and
 subject to the CONDITIONS printed at back;—also to complete and hand over the same in a satisfactory
 and workmanlike manner to the Executive Engineer or his authorized representative on or before
 the _____ day of _____ in the year of Christ one thousand
 eight hundred and _____

Signed sealed and delivered by the said

this _____ day of _____
 in the year of Christ one thousand eight hundred _____
 and _____ in the presence of _____

Rev: 5026/82

Subd. No. 2360/82

C.A.

15TH SEPTEMBER 1882, No. 984, REVENUE.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—the following Proceedings of the Board of Revenue, dated 4th September
 1882, No. 2210:—

Read—G.O., dated 25th July 1882, No. 2381, Revenue.

Resolution—dated 4th September 1882, No. 2210.

The Board consider that the schedule contract is an agreement and is liable to
 duty under Article 5 (c) of Schedule I of Act I of 1879.

(True Extract.)

(Signed) R. SEWELL,
 Acting Sub-Secretary.

To the Secretary to Government, Revenue De-
 partment, with two original enclosures,
 returned.

ORDER—dated 15th September 1882, No. 984, Revenue.

Separate Revenue, No. 211.

Stamps.

The Government in this Depart-
 ment concur in the Board's view, which
 will be communicated to the Public
 Works Department, with reference to
 the Order in that Department, dated
 3rd July 1882, No. 1671W.

(True Extract.)

Admiral
 Secretary to Government.

To the Board of Revenue.

„ Public Works Department.

with two enclosures.

Exd. W. H. French.

60 Copies.

GENERAL
ACCOUNT.

G.O. of (1882) Madras.
PUBLIC WORKS.

Dated July, 3rd.

Recd.

Encl.

G.O., 3rd July 1882, No. 1671 W.

JULY.
Nos, 18-19.

Schedule of Contract.

*Forms of —. Orders on correspondence
relative to the —.*

3RD JULY 1882, No. 1671 W., PUBLIC WORKS.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

General.
Account.

No. 18.

READ—the following papers :—

From Lieutenant-Colonel H. R. MEAD, R.E., Superintending Engineer, Fourth Circle, to the Chief Engineer, Public Works Department, dated Ootacamund, 8th June 1882, No. 214.

I have the honor to point out that the new printed forms of schedule contracts lately supplied differ from the former ones, inasmuch that the latter portion of

paragraph 14 and paragraph 20 are omitted.

2. The first empowers the Executive Engineer to enforce as penalty the forfeiture of the guarantee fund or other security deposited by the contractor in case of the contract being cancelled, and the second makes the decision of the Executive Engineer final. Both these conditions I consider are of great importance, and they are, I believe, legal; and should there be no special reason against them, I would urge that they be not omitted.

3. I have also to bring to notice that on a reference made to Mr. Stokes, Collector of Salem, under Section 30 of the Stamp Act, he has given his opinion* that an

eight-anna stamp is sufficient for all these contracts, as they are agreements and not bonds; and as this is the case, I have ordered them all to be stamped with eight-anna stamps.

4. I would urge that the Government Solicitor should be asked to give his opinion on this point, because, although Mr. Stokes' opinion according to the Act is final as regards the individual case sent to him, it is not binding on similar cases, and it is possible that some of the low Courts may take a different view of the matter.

5. I need not point out that it is not practicable to refer each case to a Collector, to whom, under Section 30 of the Act, a fee has to be paid, and therefore it would be as well for an authoritative decision to be given, and I suppose the best decision we can obtain is that of the Government law officers.

ENCLOSURE.

From H. E. STOKES, Esq., Collector of Salem, to the Executive Engineer, Salem Division, dated 8th April 1882, No. 754.

In reply to your letter, No. 2, dated 3rd instant, I have the honor to state that in my judgment the schedule contract submitted to me for adjudication under Section 30 of the Stamp Act is liable to stamp-duty of eight annas under Article 5 (c), Schedule I, as an agreement not otherwise provided for. Paragraph 10 of the conditions refers to materials mortgaged to Government, but no mortgage is effected by this instrument. If there were, the matter would affect the stamp-duty.

2. If the executed instrument stamped as above stated is brought to me within a month from its execution, I shall be prepared to certify on it under Section 31 that it is duly stamped.

No. 1290 C.

Referred to the Government Solicitor for opinion.

(By Order.)

(Signed) A. S. RUSSELL,
Under Secy. to Govt., P.W.D.

23rd June 1882.

No. 18-A.

From E. BARCLAY, Esq., Government Solicitor, to the Secretary to Government, Public Works Department, dated Madras, 24th June 1882, No. 273.

With reference to the docket, No. 1290 C., dated 23rd June 1882, of the Under Secretary to Government, Public Works Department, upon a letter from the Superintending Engineer, Fourth Division, dated 8th June 1882, No. 214, I have to inform you that in my opinion contracts in the form of the schedule contract sent to me with such letter require to be stamped as mortgages with possession (No. 44 A, Schedule I of Stamp Act) and not as agreements.

2. A mortgage deed, according to the Stamp Act, includes every instrument whereby, for the purpose of securing, *inter alia*, the performance of an engagement, one person transfers or creates to or in favor of another a right over specified property. By Clause 3 of the contract it is provided that to allow of a guarantee fund being formed (for the purpose, as the contract shows, of securing the performance of the engagements thereby entered into by the contractor) on the part of Government, a deduction of 5 per cent. from all payments is to be made by the Executive Engineer at the time of payment; or, in other words, the contractor creates in favor of Government a right over that specified 5 per cent. deducted from payments made to him. Clause 14 of the contract authorises the application by Government of the mortgaged property, the guarantee fund, to the purposes for which it was mortgaged, viz., towards satisfaction of any loss sustained by Government by a breach of the contract.

3. With regard to the first and second paragraphs of the Superintending Engineer's letter, I would remark that Clause 14 of the contract was altered in accordance with Government endorsement No. 352, dated 12th February 1881, and that Clause 20 remains the same in the old and the new forms of contract.

4. I return the papers sent me.

No. 19.

ORDER—dated 3rd July 1882, No. 1671 W., Public Works.

The alteration in Clause 14 of the schedule contract, referred to by the Superintending Engineer, was ordered after due consideration, and with the express object of eliminating from the forms the provision naming a fixed sum to be forfeited in case of breach of contract. The Government see no reason to alter their decision.

2. The allusion of the Superintending Engineer to the latter portion of Clause 20 being omitted is not understood, no change having been made in that paragraph.

3. The question relative to the stamp-duty leviable on contracts in the form of the schedule contract will be remitted for consideration in the Revenue Department.

(True Extract.)

(Signed) R. H. SANKEY, Colonel, R.E.,
Secretary to Govt., P.W.D.

To the Superintending Engineer, Fourth Circle.

- „ other Superintending Engineers.
- „ the Consulting Architect to Government.
- „ the General Superintendent, Public Works Work shops and Stores.
- „ the Superintendent, Madras Harbour Works.
- „ the Examiner of Public Works Accounts.
- „ the Government Solicitor.
- „ the Revenue Department with two Enclosures.

Exd. A. F. Goodall.

spare Copies

*Herewith the paged
proof of the Local Finance
Accounts which please
have struck off.*

RCJ

*EP.
22/9*

*C
Qu.
22/9*