

1925

KENYA

C.O.
19233
29 APR 25

DATE

28th April 1925.

CROWN AGENTS.

CIRCULATION :-

Mr.
Mr.
Mr.

KILINDINI HARBOUR WORKS.

Comments by Messrs Coode, Fitzmaurice regarding date of completion. Copy has been sent to Kenya.

Asst. U.S.

Per U.S. of S.

Per U.S. of S.

Secretary of State

Previous Paper

O.A.C. 18566

MINUTES

The Consulting Engineers report that it
is not intended that the work should
be finished till August 1926, or
1926. I suppose personally I am not
frugal on the water and unless the
work is to be done in a short
(any manager in view of the obvious
delay which has already occurred)
has considered an option to be made,
I suggest that we should ask C.A. to
try to be finished on 6 days.

1 MAY 1925

6 MAY 25

18 MAY 1925

See Mr. Goo. 6 May 25
See Mr. Goo. 18 May 1925
See Mr. Goo. 18 May 1925
See Mr. Goo. 18 May 1925

Subsequent Paper

O.A.C. 25553

Copy has been sent to Kenya. I am not desirous to the
advantage to be expected for. However, but it may help.
And copy 18566 to C.A. & support. C.A. 29.4.25
The Commission. NZ 30/4

S. K. Kumbal

Kilindini Harbour Work

Mr. Ormsby Gore

203

Mr. Mitchell, Colonel Carmichael and Mr. Spiller called ^{today} this morning.

The actual construction of the ^{wharf} ~~wharf~~ reclamation, etc., is now finished, and what prevents the wharf from being used is the non-completion of the sheds. The original contract provided for one double story shed at the back (i.e. under the cliff) and two single story sheds in the front. Soon after the contract was signed this was changed to two double story sheds at the front, with no shed at the back. Nothing was said regarding extra time for this variation and the contractors were simply told to carry out ^{the} ~~the~~ certain work. It is probable that if the Government had told them that they were expected to complete in the contract period of three years, they would have demanded extra time, and we should have known better where we stood. On the other hand, as they did not say that extra time would be necessary, it is doubtful how far they can claim it now.

Mr. Mitchell pointed out that the change made extra time reasonable, as the construction of heavy two story sheds at the front of the work could not be taken up until the ground work was complete, or nearly so.

Everything now turns on the sheds, and the wharf is useless until, at all events, the first 7 bays of the first shed are ready. The wharf can then be used for lighters, but not for ships until the two sheds are completely finished.

The use of the wharf would in any case have been held

~~Handwritten scribble~~

Handwritten notes on the left margin:
 likely myself
 at the quarter
 the front
 might also
 been raised
 on the three
 main
 Contractors had
 h, 2 ft, an
 basis of time
 Contract.

Handwritten note: I agree

~~Handwritten scribble~~

held back by the late delivery of the cranes, which are not part of the contract. The work is now well in hand, and the cranes will be ready when the 7 bays are open. Another point is the railway connection with the ^{main line} ~~mainland~~, which is also outside the contract. Mr. Mitchell's impression is, however, that this is already completed.

The date for the completion of the first 7 bays (15th August 1925) is not mentioned in the Governor's telegram (18566/25), and it is important from the point of view of making a start. All the dates quoted in paragraph 3. of the Consulting Engineer's letter of the 23rd of April are non-committal, ^{and} ~~but~~ Paulings ^{will} ~~are not anxious to~~ offer any earlier dates.

Mr. Mitchell's idea is that the contractors must certainly have a further extension of time, and he proposes to give them to February. Then, in his opinion, the liability for penalty should begin to run. But, he considers that a further extension will in fact be necessary. February is chosen because they began work on the second shed last April, and he considers that ten months, or at the most 12 months, should be sufficient if the contractors use proper expedition. He will write on this question of extension of time.

The immediate point is that, which (as shown in the letter of the 23rd of April) he has discussed with Messrs Pauling, ~~and~~ the details of handing over. I think that the arrangement proposed, namely, that for those portions of the work which they hand over before the completion of the whole, the contractors should be relieved of the cost of maintenance, except

for

for defective work, is reasonable, and Mr. Mitchell hopes that it will satisfy the contractors. In order to put matters on a definite footing it is proposed that he should send to the contractors a copy of his letter of the 23rd of April, and receive from them a copy of the instructions which they ~~send~~ send out to their local man similarly embodying the results of the discussion.

I asked that this should wait until I had put the papers forward, lest these friendly arrangements should be held to defeat whatever ^{legal} position we have over the delay in completing the whole work. But I think (in view of the failure to fix a time limit for the work on the sheds, which was not included in the contract) we are on very weak ground, and that I might at once tell Colonel Carmichael that the exchange of letters is agreed to.

As regards pressing the contractors, as the Acting Governor desires, to expedite the work, I think that we might write to the Crown Agents and ask that every effort should be made. But there are, of course, limits to the extent to which pressure of this kind could be exerted, as it might recoil on our Consulting Engineers when the time comes for them to act as Arbitrators in the final clearing up of matters in dispute. I may mention that they have been advised that it is not necessary for them to claim penalties under Clause 44 of the contract as soon as they begin to run,

or

the 26/6

A

B

the 26/6
18566
12

or even to give notice ^{then} to them that they will claim later.

[It will be noticed that the contract is on the basis of schedule rates, but I ascertained that this and the alteration of the work in regard to the sheds will not in fact make any appreciable difference to the cost of the work to the Government.]

For approval of A + B +

W.C.S.

also telegraph to King in reply to 18566 saying that we have proceeded on at B, & giving August 15th 1925 as the date when it is hoped that the first main boys will be ready.

W.C.S.

13.5.25

C.S. 13.5.

M 14/5/25

at once

107 15-5-25



C. O.
19233
29 APR 25

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ALL COMMUNICATIONS
TO BE ADDRESSED TO THE
CROWN AGENTS FOR THE COLONIES.
THE DATE OF THIS LETTER BEING QUOTED
AND THE FOLLOWING REFERENCE:
TELEGRAMS "CROWN, LONDON"
TELEPHONE, 7785 VICTORIA

B.430/5

4, MILLBANK,
WESTMINSTER,
LONDON, S.W. 1

28th April, 1925.

Sir,

I have the honour to transmit for the information
of the Secretary of State, the enclosed copy of a letter from
Messrs. Coode, Fitzmaurice, Wilson and Mitchell, regarding the
date of completion of the Contract for construction of the
Kilindini Harbour Works and the question of certain portions
of the work being taken over beforehand by the Colonial
Government.

2. A copy of this letter has been forwarded to the
Colony for the information and guidance of the Government.

I have the honour to be,

Sir,

Your obedient servant,

W. A. Birchall

for Crown Agents.

Under Secretary of State,
COLONIAL OFFICE.

CA.

5. Since then we have been in negotiation with the Contractors with a view to a portion of the work being handed over before the whole is completed.

6. On the 31st March 1925, we wrote them as follows:-

"We are informing the authorities of the dates on which you now contemplate completing various portions of the work. As soon as we hear from them we will address you again on the subject of handing over a portion of the work before the whole is completed. You will remember that at our interview on the 24th April, 1924, Colonel Lyell asked that in consideration of your handing over a portion of the work before the whole was completed you should be relieved of so much of the work as is handed over. In the subsequent correspondence, vide our letter of the 25th April, 1924, and your reply of the 30th April, 1924, we came to an agreement on this subject. We presume this arrangement, which we are prepared to recommend the Colony to accept, still holds good"

to which they replied on the 2nd April, 1925:-

"We are ready and willing to assist the Railway Department in any way we can provided it will not hamper our work to bring into use as much of the Wharf as possible after arrangement with our Agent at Kilindini. The arrangement as regards maintenance, see your letter of the 25th April, 1924, and our reply 30th April 1924, will hold good".

7. We have since had interviews with Colonel Lyell, of Messrs. Pauling and Co., Ltd., at which he stated that provided the handing over of the portion did not hamper them in the completion of the remainder of the work, they would not make any claim against the Government on account of this handing over. He also expressed the opinion, in which we concur, that it should be possible to hand over certain portions of the work as completed without interfering with the progress of the remainder. This question of interference could, however, only be settled definitely on the spot at or about the time the handing over is to take place.

8. We recommend that if, as we believe to be the case, the Authorities in the Colony wish to take over portions of the work as they are completed, the procedure should be, that on or about the 15th August 1925, our Resident Engineer should arrange to take over 7 Bays of No. 1. shed and the Wharf etc.

south of cross section No.10 provided the Contractors Agent can give him a letter to say that this handing over will not hamper their work or give rise to any claim. On or about 31st December, 1925, a similar procedure should, we recommend be adopted with regard to the taking over of the whole of No.1 shed and the Wharf etc. south of cross section 12.50.

9. When the question of handing over a portion of the work before the whole is completed, was taken up with the Contractors last year, they asked that they should be relieved of the maintenance of so much of the work as was handed over. We were not prepared to recommend that this request should be acceded to wholly but informed them in our letter of 25th April, 1924, that:-

"With regard to the maintenance of the portion of the work handed over we are prepared to recommend that you should be relieved of all maintenance of this part of the work except in so far as it may be necessitated by unsound or defective work, i.e. in relation to the portion of the works handed over clause 45(a) of the contract would read as if it ended with the words "unsound or defective" in the 8th and 9th lines. We shall be glad to know if you agree to this procedure with regard to the maintenance of the portion of the work under consideration."

To this they agreed. As may be seen from the letters quoted in paragraph 6, this arrangement still holds good.

10. Seeing that the Contractors are not under the terms of the Contract bound to hand over any portion of the work before the whole is completed, we are of opinion that in consideration of their doing so it is equitable that they should be relieved of their maintenance to the extent indicated above and we recommend that the Colony should confirm our proposed action in the matter.

11. It is possible, but we hope unlikely, that the Contractors may have some claim to make on account of handling and re-stacking material stored on the area ~~to be~~ handed over. If so, any such claim should be settled on the spot by our Resident

Engineer, after consultation with the local Authorities, before the handing over takes place. If the claims were of any dimension it would of course be a matter for consideration whether it would not be best to defer the taking over. We discussed the possibility of such claims with Colonel Lyell, who considered them remote. We mention it, however, so that the local Authorities may be forewarned if the question should arise.

12. To sum up we recommend that the Colony should take over the portions of the work indicated above as soon as the Contractors are prepared to hand over, provided such handing over is accompanied by an undertaking from the Contractors to the effect that the handing over will not give rise to any claim.

We have the honour to be,

Gentlemen,

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Your obedient Servants,

For COODE, FITZMAURICE, WILSON AND MITCHELL.

(Sgnd) H. H. G. Mitchell.

CA 19233/25

Mr. B. B. ...
Mr. B. B. ...

Kanya

O. D.
R 1-MAY
D

Mr. Strachey
Mr. Shuckburgh
Mr. Davis
Mr. Grindle
Mr. Campbell
Mr. ...

DRAFT.

1 May 1925

Sent

I am in the act of replying to your letter of 4/30/25 of the 28th of April and to thank you for the receipt of the acc.

copy of a list from the Acting Secy of Kanya regarding

(the date of completion of the contract for the construction of the Malindi Harbour Works

2. I have to suggest ^{suggest} ~~that~~ ~~it is possible~~ ~~to send Mr. Mitchell~~ ~~to see if the same~~ ~~can be done~~ ~~that~~ ~~it is not~~ ~~in~~ ~~some~~ ~~urgent~~ ~~purpose~~ ~~might~~ ~~possibly~~ ~~be~~ ~~done~~ ~~by~~ ~~Mr.~~ ~~Mitchell~~ ~~if~~ ~~possible~~ ~~at~~ ~~the~~ ~~last~~

Dr. A. G. Kanya 23/5/25
18204/25

should be discussed early, 2020 am 3:30 p.m.
Came and discussed with your representatives
that representatives of the Local Agents
to the Colonial Office and discussed
them and the Commission for the
this matter with the Commission
around here at some convenient time
Dept. If you agree to call a conference
to go into the question with the
I am to request you to arrange
East African Dept.
with Mr. Roberts and the Head of
the East Africa Dept. here for a
convenient time for the
discussion

I am etc
(Signed) W. C. BOTTOMLEY.

Beach July 15 Cd. 19233/25 Kenya
Bottomley 15 July 1925



Secretary
Sarkisburgh
Dept.
Ordnance
H. G. Smith
M. G. G. G.
M. G. G. G.

230
@Doleal sent
11. 15. 25
16. 5. 25
S. 100 5

AFT. Code tel.

Kenya
Nairobi 18556/25 16th July 1925
23rd April 1925

Harbour Works Contractors
are being informed that
every effort should be
made to expedite Com.

W.C.B.

CA 19233/25

8462 30.0
Baltimore 30/

Kanya

- Mr. Simches
- Mr. Shuckburgh
- Mr. C. Davis
- Mr. Grindle
- Mr. Lambert
- Mr. Grimsby-Gore
- Mr. Emery

O. D.
MAY

DRAFT.

1 May 1925

Sent

I am re. to act. As recd. of your letter E. 430/5 of 28th of April and to thank you for informing the acc. copy of a let. from the Acting Secy of Kanya regarding the date of completion of the contract for the construction of the Kintindini Harbour Works

O.P.G. Kanya 23.50/1
2500/5

2. I have to suggest ~~that it is possible for you to ask Mr. Mitchell~~ ^{to advise of the various points} I have to suggest that ~~it is not probable~~ ^{that} some useful purpose might ~~be served~~ ^{be served} if Mr. Mitchell ~~is~~ ^{is} ~~not~~ ^{not} ~~sent~~ ^{sent} ~~to~~ ^{to} ~~London~~ ^{London}

cannot continue with your representation
that representatives of the local agents for the
to the Colonial Office and discussed
Ghoris and the Comptroller by means and
this matter with Chamberlain
stand here as some convenient time
Dept. 16 can open to such a course
to go into the question with the
I am to request you to arrange
East African Dept.
into the relevant and the head of
the East Africa Dept. here for a
written agreement here for the
Discussion

I am etc
(Signed) W. O. BOTTOMLEY.

Book July 15 Ch. 19233/25 Kenya
Bottomley 15/7/25



- Wiley
- Blackburn
- Dips
- Windle
- Wheaton Smith
- Wiley-Gore
- Wiley

Wiley

Added & sent
11.15 a.m.
16.5.25
S.D.W.

230

AFT. Code tel.

192

Kenya

Nairobi 1856/25

16th May 1925
23rd April Kilindini
Harbour Works Contractors
are being informed that
every effort should be
made to expedite Com.

2/1/25

pleas I hope
that the first seven
bags of the first shed
will be ready by the
13th August 1925

Secur

Ca 19233/25 Kenya

231

Best May 15
Bottomley 15/5

ndey
Blackburgh
Dnes
Grindie
Hastern Smith
addy-Gore
ary

h/2

S/2

FT:

15 May 1925

Ca

S/2

Sent

With ref to your letter,
E 430/5, of the 28th of April,
the reply from this Office
of the 1st of May, regarding
the date of completion of the
contract for the construction of

2/6/25

The Milindini Harbour

works, I am to request that, in accordance with the Acting Governor's desire,

that the Contractors may be informed that ^{it is desired that} every

effort ^{will} should be made

to expedite the completion

of the works.

W.C.

Signed W. O. BOTTOMLEY.