

1929.

NEW ZEALAND.

ARMSTRONG, WHITWORTH, AND CO., LTD., AND THE ARAPUNI CONTRACT

(REPORT ON) BY F. W. FURKERT, ENGINEER-IN-CHIEF, PUBLIC WORKS DEPARTMENT.

*Return to an Order of the House of Representatives dated 5th September, 1929.**Ordered, "That there be laid before this House a return showing (1) The claims of Messrs. Armstrong, Whitworth, and Co., Ltd., to be relieved of their contract at Arapuni; (2) the reply of the Public Works Department to those claims; and (3) the terms of settlement."—(Mr. FLETCHER.)*

Public Works Department,

Wellington, N.Z., 16th October, 1929.

It would be a very difficult matter to supply the whole of the information asked for by Mr. J. S. Fletcher in Return No. 47, as the negotiations took months to finalize, and a great deal of correspondence took place and interviews were held between the contractors' engineers and the Government's Engineers, and later between the contractors' representative and the Government, counsel being employed on both sides. It is difficult even to give a summary, but the following will make the position clear.

The firm of Armstrong, Whitworth, and Co. did not, in the beginning, formally ask to be relieved of their contract, but endeavoured to escape from the responsibilities of their contract, which called upon them not only to build the power-house but design the same, by asking the Department for directions as to what they should do when they found difficulty in connection with unwatering the foundations. Naturally to have commenced giving detailed instructions to the contractors would have relieved them of the major responsibility, and would have thrown upon the Government the responsibility for making decisions and devising schemes for which they were already paying the contractors.

The contractors took up the stand that what the Department asked them to do was impossible. (That it was not impossible has been amply demonstrated since.) After considerable argument the contractors put forward certain suggestions and asked that the Government should approve of them, thereby taking the responsibility for the success or otherwise of what was proposed, and they also wished to be paid for the cost of doing anything in excess of what they had originally contemplated. As there was no evidence of what they originally contemplated, it would therefore have been impossible to check what work (which had to be done) had not been allowed for by them when tendering, and consequently their contention, for two reasons, could not be accepted.

Meanwhile they had ceased work on the most essential part of the job, and for a long time before ceasing had made such poor progress that it was amply evident they could not complete the work in anything like contract time, even if they attacked the problem vigorously.

The Department served them with various notices to get on with the work, and finally a special King's Counsel was sent out from London by the company to negotiate direct with the Government, with the idea of getting out of the contract altogether. He endeavoured to put the blame of the trouble on the Department by stating that we had induced his principals to take a contract to do what was impossible, and what the Government officers now knew in their hearts was impossible. The Government officers never admitted this contention, and have since proved the contrary.

In pursuance of this attitude the company's representative mentioned some extraordinarily high figures as being what he considered his firm should receive as compensation for the cancellation of the contract. A newspaper report of an interview with the company's London representative mentioned £1,000,000, but later Sir Edward Shortt, the King's Counsel, denied the accuracy of this report, but there is no doubt that the figure which Sir Edward Shortt had in mind when discussing the matter with the Government at first was at any rate a very considerable fraction of £1,000,000.

He, however, did not commit himself to writing to any great extent, but, after having prepared a scheme which varied from the proposals which were included in the original contract, he claimed that the Government should take the responsibility for the new proposals, and that his company should be paid the extra cost of this variation, plus the costs of any excavation and concrete below the levels shown on the plans submitted by them for approval, plus the cost of reinforcement for such foundations in addition to the original, plus the cost of bearing-piles if required, and plus a sum of £275,000 to cover direct and indirect loss.

The Government could not agree to any of this, being of the opinion that the design of the work as originally proposed could be carried out, and that if the contractors chose an alternative the onus was on them to pay for it, and that if they lost money on their contract that was their affair.

After a lot of argument, a great deal of which was not reduced to writing, a settlement was made on the lines of the two statements attached hereto, from which it will be seen that the company was paid for the work they had done at schedule rates, so far as schedule rates could apply, and were paid £30,000 for preliminary works, &c., as set out in the sheet attached hereto.

F. W. FURKERT,
Engineer-in-Chief and Under-Secretary.

ARAPUNI CONTRACT.

AGREEMENT BETWEEN MINISTER OF PUBLIC WORKS AND SIR W. G. ARMSTRONG, WHITWORTH, AND
Co., LTD., CONTRACTORS.

Dated this 9th day of December, 1927.

1. The Public Works Department are to take over Section 2 forthwith, and the contract so far as it relates to Section 2 shall be determined as from the date of such taking-over for all purposes, upon the terms set out in the following paragraphs.

2. The contractors shall be paid the sum found to be due under paragraphs 3 and 4 hereof, and in addition the sum of £30,000, being an agreed sum in payment for preliminary and temporary work and expenditure carried out and incurred by the contractors of which the Public Works Department will have the benefit, including all huts and cottages, offices, sheds, and construction and other buildings erected for the purposes of Section 2 and set out in the sheet attached hereto and marked "A," and including also the construction of coffer-dam.

3. The whole of the work done on Section 2 except such as is included in the £30,000 mentioned in the last preceding paragraph shall be measured forthwith, and the actual quantities of work actually done (finished or unfinished) shall be paid for at schedule rates. In the case of such items as are incapable of measurement, then the percentage of work done towards completion shall be mutually agreed as to each item and proportionally paid for at schedule rates.

4. Such permanent equipment as is covered by schedule rates and is not erected to be paid for at schedule rates (less the contractors' estimated cost of erection and estimated on costs on the the erection).

5. "Schedule rates" shall mean the rates which are set out in the schedule or have been applied to interim payments. The deductions of the 7 per cent. and the 0.577 per cent. shall not be made.

6. Any permanent equipment not covered by schedule rates and taken over by the Public Works Department shall be taken over at prices to be agreed upon; or, if not required by the Public Works Department, is to be removed by the contractors from the works.

7. Should the Public Works Department require the use of Section 1 on costs and Section 1 temporary works the Public Works Department shall pay for such use at agreed charges.

If the contractors complete Section 1, as they expect to do, by the end of December, 1927, or soon after, then any temporary works or other conveniences on Section 1 required by the Public Works Department for executing the work on Section 2 to be taken over at a price to be agreed.

8. Should the Public Works Department desire to take over any of the contractors' construction plant, the Public Works Department may do so within one month of their taking over Section 2, at a mutually agreed price, always provided the contractors do not require such plant for completion of Section 1, or during the period of maintenance.

9. Any tools, stores, and materials belonging to the contractors required by the Public Works Department to be taken over at an agreed price.

10. In view of the first paragraph of clause 53 of the specification for Section 2, the contractors to have the use of the machines free of charge (subject to the convenience of the Public Works Department) until the Public Works Department require their full and constant use.

11. The contractors shall deliver to the Public Works Department forthwith all plans and sketches and diagrams prepared and lists of all permanent equipment, materials and plant ordered or which remain to be ordered in connection with or for the purposes of Section 2.

12. The contractors shall also deliver to the Public Works Department their contracts (or copies thereof) with the A.S.E.A. and any other persons, firms, or companies for the supply of materials, plant, equipment, or any other supplies whatsoever for the purposes of or in connection with Section 2, and the contractors will assign to the Crown the benefit of all such contracts, and shall indemnify the Crown and the New Zealand Government against all claims thereunder for payment of the price payable by the contractors under the said contracts.

13. The contractors agree to supply stone and sand to the Public Works Department under the following conditions:—

- (1) Approximately 14,500 cubic yards of crushed stone. The Public Works Department shall pay for this quantity at 11s. per cubic yard, plus 3 $\frac{3}{4}$ per cent. for sinkage into ground at dump when cross-sections taken of the dump show 14,500 cubic yards. This stone will be delivered to a site within 200 lineal yards south of the dam terminal of the quarry ropeway, under the ropeway. The Public Works Department to make their own arrangements for lifting and running same therefrom.
- (2) Approximately 7,500 cubic yards sand. The Public Works Department shall pay for this quantity at 2s. 6d. per cubic yard, when cross-sections taken of the dump indicate 7,500 cubic yards. This sand will be delivered to a site immediately eastward of the outdoor station. The Public Works Department to make their own arrangements for lifting and running therefrom.

After these quantities of stone and sand have been delivered by the contractors to the dumps described, the provision for supplying the Public Works Department with these materials as called for in clause 26 of the specifications for Section 1 shall cease to operate.

14. The supply of water, power, and light to the Public Works Department shall be subject to a mutually satisfactory arrangement to be made at Arapuni to meet the circumstances. Clause 16 (water-supply) of the specification for Section 1 shall be altered if and when necessary to meet these circumstances.

15. In all references in this memorandum to sums which are to be paid by the Government or the Public Works Department it is understood and agreed that all payments already advanced or made to the contractors are to be credited and allowed by way of deduction, and only the balance is to be paid to the contractors.

16. This agreement is intended to be a settlement of all disputes and differences and mutual claims and demands whatsoever in respect of Section 2, and its spirit is that of co-operation to facilitate the completion of Sections 1 and 2. Neither the contractors nor the Public Works Department shall be exigent in their demands, and in cases of disagreement or dispute in respect of any matter herein left to be arranged or agreed upon between the parties and which they are unable to arrange or agree upon, such disagreement or dispute shall be referred to Mr. James Marchbanks, of Wellington, Engineer to the Harbour Board (or, in case of his incapacity, inability, or refusal to act, Mr. Hugh Vickerman, of Wellington, Civil Engineer) whose decision shall be final, conclusive, and binding on all parties.

Signed by the Honourable Kenneth Stuart Williams, } K. S. WILLIAMS.
Minister of Public Works, in the presence of—

J. W. Black, J.P., Private Secretary, Wellington.

Signed by Sir W. G. Armstrong, Whitworth, and Co., } SIR W. G. ARMSTRONG, WHITWORTH,
Ltd., by its Attorney, Edward Shortt, in the } AND CO., LTD. (by its Attorney,
presence of— } EDWARD SHORTT.)

J. W. Black, J.P., Private Secretary, Wellington.

I, EDWARD SHORTT, of 6 Grafton Street, New Bond Street, in the County of London, England, presently on a visit to New Zealand, one of His Majesty's Privy Councillors, do solemnly and sincerely declare as follows:—

1. I have executed the foregoing agreement for and on behalf of Sir W. G. Armstrong, Whitworth, and Co., Ltd., under and by virtue of a deed-poll or power of attorney bearing date the 2nd day of August, 1927, under the seal of the said company.

2. I have received no notice or information of the revocation of the said power of attorney or of the winding-up or dissolution of the said company.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act of the General Assembly of New Zealand intituled the Justices of the Peace Act, 1927.

Declared at Wellington, this 9th day of December, } EDWARD SHORTT.
1927, before me—

[STAMP.]

J. W. BLACK,

A Justice of the Peace in and for the Dominion of New Zealand.

ITEMS OF WHICH PUBLIC WORKS DEPARTMENT WILL RECEIVE BENEFIT.

Hutting for 125 men (including proportion of married quarters), including cookhouse, bathhouse, lavatory block, &c., with branch water-pipes, indoor electric wiring, all plumbers', sanitary, and other fittings which are not plant.

Power-house offices, but not furniture.

Motor-generator shed and foundations for generator.

Power-house stone and sand bins.

Loading-banks for machinery.

Protection covers and sheds over machinery.

Tail-race excavation.

Work done on equipment before erection.

Balance of S.G.E. travelling-expenses to site.

Survey and setting out.

Other temporary buildings, excluding hutting on Section 2.

Permanent material case location, &c.

Civil engineering drawings—steel bending and location sheets.

Borings over the power-house site.

Access to works, footpaths, &c.

Salvage value of steel piles driven in coffer-dam.

Salvage value of transformer oil-drums.

Pump stage and sump.

Administration on all of the above.

£30,000.

Wellington, 7th December, 1927.

Approximate Cost of Paper.—Preparation, not given; printing (450 copies), £4 2s. 6d.

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