

**HUNDRED AND FORTY-EIGHTH
REPORT**

**PUBLIC ACCOUNTS COMMITTEE
(1988-89)**

(EIGHTH LOK SABHA)

**AVOIDABLE EXPENDITURE ON PROCUREMENT
OF CARTRIDGE TAPERED ROLLER BEARINGS**

**MINISTRY OF RAILWAYS
(RAILWAY BOARD)**



*[Presented in Lok Sabha on 12 April, 1989]
Laid in Rajya Sabha on 24 April, 1989*

**LOK SABHA SECRETARIAT
NEW DELHI**

*April, 1989/Chaitra, 1911 (Saka)
Price : Rs. 10.00*

CORRIGENDA TO 148TH REPORT OF PAC (8TH LOK SABHA)

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CONTENTS

| | PAGE |
|--|--------------|
| COMPOSITION OF THE COMMITTEE | (iii) |
| INTRODUCTION | (v) |
| REPORT Avoidable expenditure on procurement of Cartridge Tapered Roller Bearings ? | |
| — Procurement of Cartridge Tapered Roller Bearings | 1 |
| — Additional order on NEI | 12 |
| — Release of foreign exchange against additional order under option clause | 15 |
| — Refund of liquidated damages | 18 |
| — Payment due to variation in foreign exchange rates | 22 |
| — Reimbursement of Excise Duty on imported component against the terms of contract | 25 |
| — Mounting of bearings on wheel sets | 27 |
| — Performance of bearings supplied by NEI | 29 |
| APPENDICES | |
| I Audit Para 4.2 of the Report of C & AG for the year ended 31 March 1987, Union Government (Railways) | 35 |
| II Details of offers received from the firms after negotiations | 37 |
| III Schedule of indigenisation programme of NEI and PBI | 39 |
| IV Extract of page 49/n of Railway Board's file No. 182/Rs 1)874/2 | 41 |
| v Copy of the Contract with NEI | 42 |

(II)

| | | |
|------|---|----|
| VI | Copy of Chairman, Railway Board's D.O. No. 83/RS-(B)/952/19 dated 18.2.84 to Shri D V. Kapur, Secretary, Heavy Industry | 48 |
| VII | Copy of Railway Board's letter No. 82/RS(1)874/2 dated 7.8.84 to NEI | 49 |
| VIII | Statement of observations/Recommendations | 50 |

PART II*

Minutes of sittings of Public Accounts Committee held on 12 January 1989 and 11 April, 1989

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28/12/1990

*Not printed (One cyclostyled copy laid on the Table of the House and five copies placed in the Parliament Library.

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(1988-89)

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(iv)

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@ Appointed w.e.f. 7.12.1988 *vice* Shri Kalpnath Rai ceased to be a member of the Committee on his appointment as a Minister of State.

DRAFT REPORT

Procurement of Cartridge Tapered Roller Bearings

In January 1981, the Railways decided to undertake manufacture of BOX 'N' Wagons fitted with cartridge tapered roller bearings having the "American Rail Road" (AAR) approval. At that time these bearings were not being manufactured in India and the Railways decided that simultaneously with the development of indigenous capacity, matching imports of roller bearings would be made to keep the production of BOXN Wagons going.

2. The AAR approval for these bearings falls under the following three categories :

1. "Conditional approval" for sale of 32000 bearings (for 4000 cars), after scrutiny of drawings, checking/testing of bearing samples and testing on "test rig."
2. A second "conditional approval" after satisfactory inspection of first batch at the end of one year's service with minimum 40000 KMS. for sale of another 32,000 bearings.
3. "Approval" for unlimited sale of bearings if after at least two years of service the sampled bearings from both lots are found satisfactory.

3. For procurement of cartridge bearings for BOXN wagons, the Railway Board invited global tenders in January 1981 of a quantity of 24,000 bearings covering the requirement of 3,000 wagons which were programmed for production upto March 1983.

4. The Audit have examined various relevant issues involved in the procurement of cartridge tapered roller bearings in response to this tender in paragraph* 4.2 of the Report of C&AG of India for the year ended 31 March 1987 Union Government (Railways). The tenders received were opened by the Tender Committee on 5 August 1981. The Tender Committee consisting of Director, Railway Stores, Director Mechanical Engineering (W) and Joint Director, Finance (Stores) was asked to consider

*Appendix—I

quality of bearings to the ordered as 40000 against the 24000 bearings mentioned in the tender notice. According to the Railways this was done because of the increased production plan of wagons finalised subsequent to floating of tenders.

5. Justifying their decision for not floating fresh tenders for the additional quantity, the Railways have stated that the Tender Committee had decided to call all the firms whose offers were acceptable for negotiations when opportunity was availed to draw the attention of the firms to the increased requirements for submission of their revised quotation and that in essence it was as good as a re-tender.

6. The tender notices contained a specific stipulation that the product should have unconditional AAR approval. The stipulation was according to RDSO "evidently to ensure that only approved products of established performance are only used" and that "the situation does not permit any experimentations or trial with bearings to be used in BOXN".

7. In response to the tender notice, 14 firms responded and the offers were for 7 brands namely SKF/Italy, Koyo/Japan, Timken/USA, NSK/Japan, NANKOW/China, FAG/Germany and Branco/USA. Of these, while NANKOW was not covered even by a conditional AAR approval, FAG, SKF and NSK were covered by only conditional AAR approval. Some of the offers were received direct from the manufacturers and some through the authorised agents/distributors.

8. The following criteria was recommended by RDSO, depending upon status of AAR approval, for consideration of offers :

| Sl. No. | Type of AAR approval | Quantity limitation |
|---------|---|---------------------|
| (a) | Approved for unlimited sale | unlimited Nos. |
| (b) | AAR conditional approval with satisfactory in service reports | 8,000 Nos. |
| (c) | AAR conditional approval | 4,000 Bearings |
| (d) | Without AAR approval | Not acceptable |

9. In respect of indigenous offers, the RDSO recommended a quantity restriction of 3336 bearings for 417 car sets.

10. The Tender Committee who considered the 14 offers, recommended on 6 October, 1981 that negotiations be held restricting the negotiations only to the manufacturers and, where the manufacturers had not quoted for a specific brand, their authorised agents. With the Board's approval, the following firms were called for negotiations which were held on 19 October, 1981.

1. SKF
2. SUMITOMO (KOYO)
3. TIMKEN
4. NEI (BRESCO)
5. PBI (FAG)
6. BEARING ENGINEERS (FAG)
7. AVANTI (NSK)

11. During negotiations one of the conditions stipulated in case of indigenous firms was that the collaborator should guarantee the quality of the indigenous products which should be manufactured under licence of AAR approved manufacturers.

12. As per the Tender Committee, the revised offers were received from all the 7 firms and the details thereof indicating inter-alia the landed cost of the bearing including freight, insurance ($\frac{1}{2}\%$), port charges ($1\frac{1}{4}\%$) customs duty at 73% by the indigenous suppliers are reproduced as Appendix II.

13. The customs duty at 73% relating to imports by indigenous suppliers was assessed on the following basis :

"The customs tariff book indicates duty @ 40% plus 10% = 50% Excise duty (countervailing) @ 15.75% is leviable on the total price including duty i.e., 150% = 23.75%. Therefore total duty comes to 50% plus 23.75% = 73.75%."

14. According to the Tender Committee, the following position emerged after the perusal of the revised offers of the seven firms :

(a) *AAR approved Bearings*

The offers of Timken and Koyo Brands enjoyed unconditional approval by AAR and accordingly there was no quantity limitation for orders to

be placed on them in collaboration with BRESCO which was also an AAR approved bearing.

(b) Conditional Approval of AAR

The offers of SKF, FAG and NSK were for bearings with conditional approval by AAR where the AAR had imposed a quantity limitation of 4000 car sets or 32000 bearings. The RDSO in his technical evaluation had recommended that in case of these conditionally approved offers a limit of 1667 car sets or 13,336 bearings be adopted.

(c) Indigenous manufacturers with foreign collaboration

The offers from indigenous manufacturers viz. NEL and PBI envisaged a progressive indigenisation of the bearing assembly. While NEL had proposed technical collaboration with M/s. BRESCO/USA who had unconditional approval from AAR, M/s. PBI would be collaborating with M/s. FAG who had only a conditional approval.

15. M/s. Sunitomo who had offered to supply imported bearing of "KOYO" make subsequent to the receipt of the revised offer, had indicated the possibility of "KOYO" bearing being manufactured in India in collaboration with M/s. HMT. However HMT were yet to apply for an industrial licence. According to the Tender Committee, after clearance of the licence application and collaboration agreement, being a Public Sector, they would have to get the investment proposal also cleared, before going ahead with placement of orders for machinery and therefore no indigenisation could be expected in the near future.

16. As regards the indigenisation proposal from M/s. Timken, the Tender Committee was of the opinion that the firm's process regarding their intention to manufacture the bearings and adapters in India in collaboration with M/s. Kamani & Alloys Pvt. Ltd. was still at the stage of a dialogue between the firm and indigenous production could not be expected in the near future. The Tender Committee, thus, concluded that no weightage could be given from indigenous angle to the offers of Sumitomo and Timken. The Committee, therefore, considered the feasibility of covering the whole demand on the two indigenous manufacturers viz. NEL and PBI.

17. RDSO had recommended a quantity restriction of 3336 bearings on the indigenous suppliers. After considering this the Tender Committee opined that since the foreign collaborators would be under writing the

quality of the indigenously produced components of the bearings as a whole, (the indigenous items would be stamped "BRENCO" in case of NEI) the quantity restriction need not be considered and the quantity restrictions which would be applicable to the collaborator/principal should only be applied. On this basis the tender Committee decided that there would be a quantity restriction of 13,336 Nos. in case of PBI and no quantity restriction in the case of NEI.

18. The scheme for indigenisation furnished by NEI and PBI is reproduced as Appendix III.

19. Both the indigenous firms were stated to have informed the Tender Committee that they had already applied for industrial licence/technical collaboration and given indication for certain capacity in their offers for licence/collaboration as below :

| Sl. No. | Year | Railways demand | Projected NEI | capacity PBI | Total | Shortfall |
|---------|---------|-----------------|---------------|--------------|--------|-----------|
| 1. | 1981-82 | 4,800 | — | — | Nil | 4800 Nos. |
| 2. | 1982-83 | 35,200 | 24,000 | 10,000* | 34,000 | 1200 ,, |
| 3. | 1983-84 | 60,000 | 30,000 | 20,000 | 50,000 | 10000 ,, |

(*For half year as manufacture was scheduled to commence only after 6/9 months of licencing).

20. Considering the demand of Railways of 40,000 bearings upto the period ending March, 1983. the Tender Committee recommended apportionment as follows :

- (a) 24,000 bearings on M/s. NEI with adaptors and side frame keys at a price of Rs. 3385/- plus Excise Duty on indigenous content. Sales Tax Extra. FE content as quoted by the firm for different phases viz. \$ 135.29 for delivered after September '82.

Keeping the requirement of these bearings in view M/s. NEI was to be asked to supply :

- (i) 7500 Nos. against Phase I
- (ii) 7500 Nos. against Phase II
- (iii) balance 9000 Nos. against Phase III:

An option clause was to be provided to cover any exigency due to delay in obtaining AAR's approval of PBI's offer and their I/L.

- (b) 8,000 bearings to be ordered on M/s. PBI at the price of NEI to be counter-offered to them viz. Rs. 3385 (including mounting charges)+Excise Duty on indigenous content. Sales Tax Extra. The import content to be DM 4⁵2.50. This offer was however, subject to M/s. PBI obtaining unconditional approval of AAR for FAG bearings before commencement of supply."

| | | | |
|--------------|-------------------------|--|------------|
| (c) SUMITOMO | 8000 plus 50% option | 42,200 plus Rs. 90/- mounting charges | 42,000 FOB |
|--------------|-------------------------|--|------------|

21. Apportionment of larger quantity to indigenous firm. M/s. NEI at higher rate was stated to have been recommended by the tender committee on the basis of the phased indigenisation programme furnished by the firm. The option clause with SUMITOMO was recommended by the tender Committee "to cover any slippage in supply from indigenous source."

22. However, taking note of the fact that collaboration agreements were yet to be entered into, by both the indigenous offers, the Adviser (Finance) observed that it would be difficult to accept face value the claims of NEI and PBI for delivery of 24000 and 10000 numbers of bearings during the year 1982-83, the first year of their collaboration venture and that availability of these bearings should not be allowed to turn out to be a bottle-neck in Railways' programme for commissioning of 4400 BOXN wagons. In the circumstances, he recommended to increase the order on SUMITOMO from 8000 to 12000 by retaining the 50% option clause by corresponding adjustment in quantities to be placed with NEI and PBI. However, on the ground that an Indian firm was prepared to undertake the supply of the bearings with lower foreign exchange content, the 50 per cent option clause with SUMITOMO was deleted and the recommendations of the Tender Committee were approved subject to this change, by the Railway Board and Minister of Railways in January 1982.

23. In this context, it was brought to the notice of the Public Accounts Committee by Audit that against an earlier order placed by the Railways on M/s NEI in February 1979 for supply of 3900 BRENCO make cartridge bearings, there was considerable delay on the part of M/s. NEI in making the supply and the delivery date had to be extended. There was a time lag of 8 months between receipt of bearings and receipt of indigenous component and NEI did not supply any bearings by the due date of 31.1.1980, 2538 Nos were supplied by 15.5.1982 and the balance by 22.2.1984.

24. After the above allocations were decided, the Railways examined in February 1982 the representation of M/s SKFCO India Bearing Company Ltd. who had quoted the lowest price against this tender. Their offer was, however, ignored earlier as they were yet to obtain unconditional AAR approval. In their representation, the firm had stated that they were having (apart from the two indigenous offers recommended) an established factory in India and were supplying Railway bearings of different types to various World Railways. The firm contended that although for tapered cartridge bearings they were yet to comply with the requisite pre-conditions of mileage and quantity, they had the reputation and wherewithal to obtain the unconditional approval in course of time. After considering this representation, the Railways thought it to be advantageous to consider placement of trial order of 8000 Nos. of cartridge bearings on them as that would help in developing a third source for these bearings in the country. Accordingly their proposal was approved by the Competent Authority over and above the order for 40000 Nos. approved earlier on the three firms in January 1982.

25. Accordingly, orders were placed on the four firms for supply of taper bearings as per details below :

| Firm | Date on which order was placed | Number ordered | Rate Rs. |
|-------------------|--------------------------------|----------------|----------|
| SKF-Italian | July 1982 | 8000 | 2962 |
| Sumitomo-Japanese | October 1982 | 8000 | 3281 |
| NEI-Indian | June 1982 | 24000 | 3385 |
| PBI-Indian | October 1982 | 8000 | 3385 |

26. The performance of these firms in executing the supplies were as follows :

| Sl. No. | Name of Firm | Contractual delivery period | Final Supplies |
|---------|---------------|-----------------------------|-------------------------|
| 1. | M/s. NEI | March 1983 | June 1985 |
| 2. | M/s. Sumitomo | March 1983 | March 1983/ May 1983 |
| 3. | M/s. SKF | December 1982 | August 1983 |
| 4. | M/s. PBI | September 1984 | January 1985 |

27. The Committee have been informed that through NEI promised indigenisation after completion of supply in three phases of the present contract, the firm could make very little progress towards indigenisation in subsequent contracts. Import content in subsequent contracts was as high as 60 per cent as indicated below :

| Contract No. and Date | Percentage of indigenisation |
|---|------------------------------|
| (i) 85/RSF/874/3/GP-115 dt. 8.6.1985 | 38.78% |
| (ii) 86/RSF/874/8/GP-123 dt. 30.10.1986 | 40.11% |
| (iii) 87/RSF/874/12/GP-131 dt. 20.1.1988 | 40.11% |
| (iv) 88/RSF/874/3/GP-143 dt 22.6.1988 | 40.40% |

28. Justifying the high import content in the subsequent contracts handled by the firm NEI, the Railways have explained that the subsequent contracts were awarded to this firm against global tenders as per IDA guidelines and since offering of indigenous product would have rendered them uncompetative against international bidders, they had quoted for

imported sealed units, though even against these tenders, they continued to supply indigenous adopters and components like cup bolt, locking plate, sealed rings, backing rings, side frame key etc., which were not the part of sealed units.

29. As regards the present position of indigenisation, the Railways have stated that NEI have manufactured the cones and that the samples have been tested. These cones stand approved subject to certain minor modifications.

30. On enquiry whether NEI was given large orders at a higher rate only to encourage indigenisation of the product, the Railways stated by way of clarification that the basic criteria adopted by the Tender Committee for consideration of offer was not only progressive indigenisation and saving of foreign-exchange, but also to develop facility of mounting in India, adequate availability of spares, extension of Warranty period to 36 months etc. Tender Committee, therefore, considered increased coverage on indigenous source, restricting order on imported source for the balancing purpose only. According to the Railways, these objectives have by and large been achieved.

31. Consequent upon the decision of Railways of 1981 to manufacture BOXN Wagons, the need for procurement of roller tapered bearings arose for which Railways floated global tenders in January 1981. Scrutiny of tenders opened in August 1981 revealed that offers were for 7 brands from 14 firms. The offers received against the tender were stated to have been evaluated by Tender Committee based on the criteria recommended by RDSO. According to their criteria, firms with unconditional AAR approval could be given unlimited orders and those with conditional approval could be given order at the most for 8000 Nos. Out of the Seven firms called for negotiations M/s. Sumitomo and M/s. Timken had unconditional approval; M/s. SKF, M/s. Avanti and M/s. Bearing Engineers (FAG) had conditional approval; and M/s. NEI and M/s. PBI had proposed collaboration agreement with BRESCO/USA (Unconditional AAR approved) and FAG (Conditional AAR approved) respectively. Whereas the foreign collaborator, M/s. FAG, (having only conditional AAR approval) of M/s. PBI (indigenous firm) was invited for negotiation, it is not clear why that of M/s. NEI viz. BRESCO/USA (having unconditional AAR approval) was not so invited and negotiations were not held with them.

32. Revised offers received from these seven firms in the wake of the negotiations held with them revealed that the lowest offer was from M/s.

SKF; next higher offer was from M/s. Sumitomo; then in the order was the firm M/s. NEI; and so on. Out of the requirement of 40,000 orders for 24,000 bearings were placed on M/s. NEI and 8000 bearings on M/s. PBI although both were yet to sign agreements with their foreign collaborators at that time and yet to be granted industrial licence. The Railways have contended that while recommending these orders, the main consideration which weighed with them was to promote indigenisation of the product and to save foreign exchange. The indigenisation angle to the offers of Sunitomo and Timdan (both unconditional AAR approved firms) was not given any weightage on the plea that their indigenisation process would be time consuming. It is apparent that the remaining 8000 Nos had to be ordered on M/s. Sumitomo (Japan) as the placement of 32000 Nos. order on the indigenous firms was the maximum they could supply keeping in view their proposed production capacities up to 1982-83 (24,000 as of NEI and 10,000 as of PBI). The Committee note will supply that though the Tender Committee had conceded that M/s. Sumitomo had offered the best delivery terms and had the necessary unconditional AAR approval, even the 50% option clause suggested by the Tender Committee and Finance Wing of the Railways to be included in the agreement with M/s. Sumitomo was also eventually deleted. The lowest offer of M/s SKF (conditionally AAR approved) was not even considered by the Tender Committee but the firm was given orders for 8000 Nos. of bearings over and above 40,000 bearings when the firm represented to Railways subsequently.

33. The Committee have been given to understand that apportionment or larger quantities to Indigenous firms at higher rate was recommended on the basis of phased programme submitted by them. The Committee are however, constrained to point out that placement of large orders on indigenous firms was contrary to the recommendation of RDSO which had prescribed a quantity restriction of 3336 bearings on the Indigenous suppliers. Even the Adviser (Finance) in the Railways had expressed doubts about the capacity of the indigenous firms to meet the requirements of Railways for 1982 83 and had suggested redistribution of tender quantity and incorporation of optional clause in the contracts with the foreign firms to safeguard against any slippage by the indigenous firms. The contention of the Railways that the foreign collaborator of M/s. NEI (who had been given the bulk of the order) had indicated that they would be under-writing the quality of bearings manufactured by NEI as of their own and had agreed that components manufactured by the Indian collaborator would be stamped ERENCO is hardly convincing as at that time M/s. NEI had not even signed the collaboration agreement with them. While the Committee appreciate the anxiety of the Railways to see that the imports are not increased at the cost

of indigenous development. but it is more important to ensure that the Railway's own manufacturing plans are not delayed in an attempt to procure certain components from indigenous sources. Indigenisation of a product is usually slow. This has not been kept in view by the Railways while placing bulk orders for the roller tapered bearings on the indigenous source as a consequence of which supplies by M/s NEI were delayed by nearly two years affecting the production schedule of BOXN Wagons considerably (as discussed later on in this report) whereas other firms more or less carried out the orders in time. Further, the Committee could not be informed to what extent M/s NEI, who had promised complete indigenisation after completion of supply in three phases of the contract under reference, has ultimately been able to achieve indigenisation. The Committee are surprised that the high import content (10%) in subsequent contracts handled by the firm has been defended by the Railways on the grounds that those contracts were awarded to the firm against global tenders as per IDA guidelines and offering of indigenous product would have rendered the firm uncompetitive against international bidders. The Committee are inclined to conclude that the purposes with which orders were given to indigenous firms, of promoting indigenisation and saving of foreign exchange particularly to M/s. NEI, have not been fully achieved. The Committee would like the Railways to draw appropriate lessons from this case and deal realistically with all future indigenisation programmes and schemes so that its own major production schedules are not unnecessarily hampered as happened in this case.

34. The Committee note in this regard that at the very time when negotiations were being held for procurement of these tapered roller bearings, NEI were not adhering to the prescribed time schedule in another contract for supply of a similar type of roller bearings for which also the collaborators of NEI were BRESCO. The Committee are surprised to note that notwithstanding this position and also the caution expressed by the Finance Wing of the Railways, the Railways for unstated reasons placed so much faith in the offer of NEI and modified the recommendations in such a way so as to tilt the scale in favour of NEI.

35. Notwithstanding their rates being high, the basic consideration for placing the faith in NEI, according to Railways, was the reduced outgo by way of foreign exchange. The Committee note in this regard that the foreign exchange components agreed to at the first second and third phases were to the extent of \$ 173, \$ 135 \$43 per bearing. As, however, even in subsequent phases the foreign exchange component was reported to be to the extent of 60%, the Committee desire to be informed as to how M/s. NEI

met the foreign exchange needs in excess of the admissible level according to terms of agreement and recommend that an investigation be made as to whether excess foreign exchange has been released to the firm and if so the reason therefor and if not, how the firm met its foreign exchange requirements.

36. It is seen from the preceding paragraph that the performance of the firm M/s NEI was poor in regard to the timely supply of bearings. Despite this, the firm was given a number of special concessions which have been discussed in the succeeding paragraphs.

Additional order on M/s NEI

37. As per the contract, NEI was to complete supply of 24,000 bearings by March 1983. However, it could supply only 10,852 bearings by the stipulated date. Even by the end of March 1984 (an year after expiry of scheduled delivery date), NEI had not supplied 6,500 cartridge bearings out of the ordered quantity and by a letter dated 3 April, 1984, the firm sought extension of time to supply the balance. At that time, according to a note recorded by the Railways on 5 April, 1984, 727 BOXN wagons were lying stabled for want of the bearings and it was decided to extend delivery date with liquidated damages and denial clauses.

38. The Demand of cartridge bearings for 1984-85 was then estimated at 30,000 and after taking into account pending supplies of 6500 from NEI and 7,200 from PBI, the Railways decided* to operate the 30% option clause available against NEI and placed order in April 1984 for supply of 7,200 bearings at the contracted price of Rs. 33.5 each. The Railways also decided to provide foreign exchange of \$83 per bearing as applicable for phase III. The additional bearings were to be supplied by December 1984 but were eventually supplied by February 1985, according to completion report.

39. Explaining the non-inclusion of option clause in the contract with foreign firms whose offers were cheaper and who had executed the orders in time, the Railways have stated that as the offer of the Italian firm was without unconditional AAR approval, RDSO limited the quantity to 8000 numbers only for trial purposes and that therefore, the question of incorporation of option clause in their order did not arise. As far as Japanese firm was concerned the Railways have explained that no option clause was specified, as there was no intention to order any further

*Copy of note-Appendix IV.

quantities on the firm, abinitio, because of the foreign exchange involved in the transaction.

40. In reply to a query, the Railways have conceded that by more inclusion of option clause they would not have entered into any financial commitment. According to them the offers of foreign firms were considered only for balancing purpose and it was expected that indigenous firms would come up, hence the need for incorporation of the option clause in the contracts with the foreign suppliers was not felt.

41. On being asked whether in view of the failure of NEI to adhere to the delivery schedule, the optional clause in the contract with the Japanese firm at a cheaper rate would have helped in getting quick supply of bearings, the Railways replied in the negative and added that even if 'Option Clause' had been stipulated, it would have been of no avail because the terminal date for exercising the option would have been around March 1983, at which time overall position of bearings was quite satisfactory considering actual production.

42. Justifying the placement of additional order on NEI even after repeated failure of the firm to adhere to delivery schedule, the Ministry have stated that when demand for additional quantity of 28 638 nos. arose in October 1983, the options available with the Railways were :

- (a) Going in for fresh imports.
- (b) Enhancing the order against indigenous firm, against option clause in the contract, hoping that teething problems would be overcome and delivery will be stepped up.

43. Railways had, in connection with the demand for the next year, just then sent tender papers to World Bank for permission to float tender as required by IDA guidelines but they had declined permission until such time a decision on smaller dia wheel was finalised. As this was a long drawn process and the Railways could not delay procurement of bearings, according to the Railways the alternative (b) was chosen, and orders were placed on NEI.

44. As per per contract with NEI, 24,000 roller tapered bearings were to be supplied by the firm by March 1983. However, it could supply only 10,852 bearings by the stipulated date. Despite the delay in supply of the bearings, by the firm, it was given an additional order for 7200 bearings in April 1984 by which time 6000 bearings were still to be supplied by the firm

against the initial order. The Railways have defended their action by saying that they needed more bearings and option clause with the firm M/s NEI providing for the provision for placement of 30% additional order was utilised. According to the Railways inclusion of the option clause in the contract with the Italian firm was not thought of because the firm had get only conditional AAR approval and in case of Japanese firm, although having unconditional AAR approval, no option clause was included because there was no intention, abinitio, to order any further quantity on it because of foreign exchange consideration. The Committee are of the opinion that the option clause should have been included in contracts with all the firms especially with foreign firms who eventually carried out the orders in time and had the necessary unconditional AAR approval. Even the Railways have conceded that by mere including the option clause in the contracts with the firms no financial liability would have been involved. By doing this any further placement of order could have been well anticipated and executed before expiry of the option clause with any of the firms which could have supplied the bearings in time. As regards the contention of the Railways about the foreign exchange involved the Committee consider that it would not have made much difference because ultimately foreign exchange was also spent though to a lesser extent in getting the additional bearings from NEI and the main consideration which should have been weighed with the Railways was timely supplies and proven quality of bearings.

45. The Committee find that at the time of the issue of tender notice in January 1981, the quantity required by the Railways was 24,000 bearings. At the time of opening of the tenders in August 1981, the requirement of the Railways increased to 40,000 bearings. While deciding the firms to whom the orders were to be placed by the competent authority in January 1982 the requirement remained at 40,000 level. However, in the wake of the representation submitted by a firm the quantity required was revised to 48,000 bearings a month later i.e. in February 1982. The Committee feel that the Railways kept on increasing the requirement without making proper assessment of the bearings required. The Committee also feel that the actual deliveries by the originally stipulated date, March 1983 may have been not more than 24,000 bearings, the same as was originally envisaged and in March 1983, the overall position of bearings was considered satisfactory, despite substantial shortfall in supply by NEI. The Committee would, therefore, recommend that the basis on which the demand was raised to 48,000 should be investigated, particularly because (as later paras would indicate), the Railways have claimed that no quantifiable loss was suffered due to delayed supplies by NEI and no claim for liquidated damages was made against the firm.

Release of foreign exchange against additional order under option clause

46. The scheme for indigenisation furnished by NEI at the time of tender negotiations indicated that after the IIIrd stage of supply under the contract, the firm would progressively reach 96% indigenisation though no schedule of indigenisation was given. The contract terms* as conveyed to the firm on 5.6.82 had an option clause as under :

"Option : The purchaser reserves the right to increase the ordered quantity upto a maximum of 30% with fully indigenous content on the same price, terms and conditions during the currency of the contract for which suitable extension in delivery period will be allowed."

47. However, when the decision to operate the 30% option clause was taken (Appendix IV), on consideration for the provisions in the option clause relating to full indigenous content was given and the Railway Board, suo moto, decided to release foreign exchange for the additional quantity. They also, amended the order on 19 April, 1984 to increase the quantity ordered from 24,000 to 31,200 and to specify that other terms and conditions of the contract would remain unchanged. The firm was granted additional foreign exchange of Rs. 55.28 lakhs for the purpose, defeating the objective of indigenisation at later stages of production. The optional clause in the terms of contract was, however, amended long after on 24 November 1986 for deleting the words "with fully indigenous content".

48. It was pointed out during evidence that as per the orders placed on the firm (M/s NEI) only limited amount of foreign exchange was to be made available to the firm for the supply of bearings by the firm in Phase I, II & III programme and nothing beyond that was to be given. The representative of the Railways stated that as per the terms of the contract, varying amounts of foreign exchange diminishing in each phase I, II and III were to be given, that optional clause was an integral part of the original contract and that the additional foreign exchange was in respect of 30% option clause which was exercised at the end of Phase III.

49. On being pointed out that the option clause was very specific that the supply must be fully indigenous, the witness stated that the option clause always pertained to the main clause and the inclusion of the words

*Appendix V

“with fully indigenous content” which was not part of the original contract would, therefore, seem to be redundant.

50. When attention of the witness was drawn to the fact that as per the terms and conditions of the contract no foreign exchange was to be given after the third phase, he replied that the main contract did not say so and added that option clause pertained to the contract and the contract clause ended with Phase III.

51. In order to justify the above contention of the Railwaas contended that the inclusion of the words “with fully indigenous content” in clause 7 of the contract was not correct and that when this was brought to the notice of the Railways, the same was rectified. In reply to another query, the Ministry stated that the question of approval of the amendment by competent authority (in this case Railway Board/Minister of Railways who had approved the finalisation of the offers) did not arise as the earlier clause had not been inserted with the approval of the competent authority. Elaborating further in this regard, the Railways have stated that in the course of vetting of the draft of the advance acceptance of the firm’s offer, one of the staff members in the Finance Directorate had added the phrase “with fully indigenous content” apparently due to his mis-reading of the recommendations of the Tender Committee. The Railways have further stated that unfortunately, the erroneous addition was not noticed and the phrase got included in advertantly in the order without being deleted. The Railways added that the said addition was not in accordance with the recommendations of the Tender Committee, as would be clear from a reading of the contents of the table* in para 6.4.3 of the recommendations of the Tender Committee, a careful reading of which, according to the Railways would indicate that the table spoke only of general indigenisation plan of the two indigenous firms even beyond the scope of this contract, as is clear from the PBI’s column in the above table which spoke of indigenisation being stretched to the years 1985-86, 1986-87 and 1987-88. The Railways also observed that NEI’s original letter dated 20 October, 1981 had clearly indicated that indigenisation beyond phase-III would be against future contracts. Further, according to the Railways, since the clause in the order itself was incorrect and not as per the Tender Committee’s recommendations, the release of foreign exchange for 30% option quantity was intended to be given.

52. The Committee have been informed that subsequent actions were taken at the level at which such amendments of the contracts are issued

*Reproduced in Appendix III.

based on Tender Committee's recommendations, viz, Joint Director (Stores), Additional Director Finance (Stores) and Additional Director (Finance) dealing with the release of foreign exchange. The Committee have further been informed that the aspect of release of foreign exchange against the option clause was also subsequently brought to the notice of the Railway Board (Member Mechanical and Financial Commissioner).

53. According to the Railways, the question of release of foreign exchange in this case was decided at the level of Additional Director (Foreign Exchange). When enquired why in this particular instance the case was decided at the level of Additional Director only when previously the original order was sanctioned by the Minister of Railways and then went to the Finance Ministry, the Financial Commissioner of Railways explained that when the option clause flowing from the main contract was operated, that formed part and parcel of the original contract. In that case, according to the Railways it was to be dealt with at the appropriate level which was Additional Director (Foreign Exchange) and that he need not take anybody's approval before sending the case to the Finance Ministry for obtaining the Foreign Exchange.

54. In reply to a query, the representative of the Railways informed the Committee that the foreign exchange against the additional ordered quantity was released in 1984 and formal amendment to the contract was made vide Amendment No. XVI dated 4 December, 1986 when the lacuna was detected at the time of making payments against this contract. The Railways were asked to clarify whether for ascertaining the legal position of the option clause the opinion of Law Ministry was taken. No specific reply was given. It is, therefore, presumed that no opinion was obtained.

55. Release of foreign exchange (Rs. 55.28 lakhs) for the procurement of additional 7,200 bearings has been defended by the Railways on the ground that the option clause formed an integral part of the contract and was covered by the same terms and conditions as were applicable to the 3 phases of the contract. However, the Railways have conveniently overlooked the fact that the option clause in the contract had specifically mentioned that the purchaser reserves the right to increase the order "with fully indigenous contents" thus implying clearly that no foreign exchange was to be sanctioned therefor. The Railways' contention that the phrase "with fully indigenous content" was erroneously included in the contract due to mis-reading of the recommendations of the Tender Committee by one of the staff members in the Finance Directorate is nothing but an after thought which has been advanced to cover up the release of additional foreign exchange. This is

also evident from the fact that the necessary amendment in this contract to justify release of foreign exchange to the tune of Rs. 55.28 lakhs was made only in December 1986 whereas the foreign exchange was released as early as 1984. What has surprised the Committee is the assertion of the Railways that the decision regarding this release of foreign exchange was correctly taken at the level of Additional Director (Foreign Exchange) and he need not have taken approval of any superior authority, particularly when outgo of substantial amount of foreign exchange was involved. The Committee deprecate the casual approach of the Railways in this important matter having bearing on the country's scarce foreign exchange. The Committee recommend that Railways should amend their procedure in this regard so that any amendment to such contract involving release of additional funds specially the foreign exchange, is invariably made at the level of competent authority (whosoever finalises the offers so that any misuse thereof could be prevented in future. The Committee cannot accept the stand taken by the Railways that the option clause would attract the same conditions as for phase III for release of foreign exchange also and recommend that the opinion of Law Ministry may be obtained in this regard even at this late stage. The Committee recommend that the admissibility of foreign exchange and manner of release thereof in this case should be examined by the foreign exchange wing of the Ministry of Finance who should also recommend measures to be adopted to the Railways to avoid loss of foreign exchange in future.

56. The Committee are also surprised to note from copy of note at Appendix IV that the decision to release foreign exchange seems to have been taken by the Railways, suo moto at the level of Joint Director (Stores) without even a formal request from NEI. The Committee recommend that the circumstance under which such a decision was taken should be fully investigated and the investigations intimated to the Committee.

Refund of liquidated damages

57. According to the contract, the delivery of 24,000 cartridge bearings was required to be made by NEI by 31 March, 1983 and the additional quantity of 7200 against the 30% option clause by 28 February, 1985. The completion report indicated of the actual schedule of supply as under :

10,852 nos. by 31 March, 1983 (Scheduled date)

13,032 nos. by extended delivery date of 30 September, 1984.

24,000 nos. by further extended delivery date of 30 June 1985.

58. The table above would indicate that 30% optional supply of 7200 cartridge bearings are reported to have been supplied four months before completion of main contract.

59. The failure of NEI to ensure timely supply of cartridge bearings resulted in stabling of wagons according to a communication No. 83/Ks (B)/952*/19 dated 18 February, 1984 from Chairman, Railway Board. Coupled with delay in supply of cartridges by NEI, the delay in mounting further aggravated the situation leading to heavy stabling, with the result that Railways wrote to NEI under letter No. 82/Rs (I)/874/2 dated 7 August, 1984 that in future, payments would be released only after completion of mounting. Further when the Railways decided to exercise the 30% option clause for placing supplementary order on NEI, 727 BOXN wagons were lying stabled for want of the bearings.

60. Having regard to the delays in supply, the Railways had recovered from the bills of NEI, liquidated damages amounting to Rs. 27 64 lakhs but after considering the completion report on the contract, the Railways, without any request from NEI, refunded the amount after deducting a token damage of Rs. 2.7 lakhs (10 per cent) only.

61. According to the Railways the procedure in the Railways is that as and when a supplier firm seeks extension for delivery period, the same is granted reserving the right to levy liquidated damages; and on receipt of the completion report from the consignees indicating whether there has been any loss or inconvenience or not, the question of leviability or otherwise of liquidated damages is examined based on its merits. Until the question of liquidated damages is finalised after completion of the contract, the FA&CAO with holds full amount of liquidated damages from the firms' bills to enable subsequent recoveries if warranted. In the circumstances, according to the Ministry, the amount of liquidated damages deducted from M/s NEI's bills, as referred to above was also one such tentative withholding pending subsequent finalisation of the question of leviability of liquidated damages on receipt of completion report from consignees. Completion Report had, inter-alia, mentioned that :

“Extreme inconvenience was felt for the belated supplies as the material was in acute shortage. Further inconvenience is

*Appendix VI

@Appendix VII

§Appendix III

also being experienced for getting replacement supply from M/s NEI Jaipur against rejection."

62. The completion report also indicated that it had been sent without vetting by Accounts and that the paying authority, FA and CAO was being advised to furnish his comments direct to the Railways.

63. The Finance Directorate of the Railways had also, inter-alia, noted that :

"Due to late supply of these bearings there has been extreme difficulties and inconvenience to the Railways as recorded in the completion Report furnished by COS (BI). There was no mention about the loss. In this connection it may be mentioned that had these bearings been supplied within the stipulated period there would have been reduction in stabling of wagons. For such stabled wagons 90% payment has been made to the manufacturers without resulting any return from those wagons stabled for want of such items. Thus, in finance opinion there has been recurring loss to the Railways. Further, the delivery period was extended with Liquidated Damages and denial clause on the recommendation made to ERDS and unqualified acceptance was communicated by the firm also. At this stage it is not clear why the question of waiving Liquidated Damages and imposing only token Liquidated Damages crept up without reference or request from the firm."

64. On being asked why the amount on account of liquidated damages was refunded to the Firm, the Railways have stated that since the completion report revealed no loss but inconvenience, it was ultimately decided to finalise the contract with levy of token liquidated damages in this case as per extent rules and procedure.

65. The Railways have added that there was no stabling of wagons till September 1983, i.e., upto six months after the scheduled expiry of the delivery period against the contract and that beyond October 1983 there has been some stabling. However, even if the cartridge bearings were available, this stabling could not have been avoided according to Railways, because adequate number of wheel sets were not available, because of port strike and that therefore, loss if any, on account of stabling of wagons cannot be attributed directly to the delays in supply of cartridge bearings.

Audit have, however, brought to notice in this regard that as on 1 April, 1984, as many as 16,656 wheelsets were available with the wagon builders for manufacture of wagons.

66. Further, according to the Railways, where the stabling of wagons is found attributable to non-delayed supply of more than one component the aspect of loss is not possible to be pin-pointed.

67. As regards the refund of the amount recovered, without any request from the firm M/s NEI, the Railways have explained that initially Associate Finance in the Board's Office was of the view that the levy of liquidated damages in this case was justified. Thereafter when the provisions of the contract and the related aspects were examined, the Legal Cell in the Board's Office agreed that having regard to the inconvenience caused in this case, as distinct from loss, levy of token damages was in order. The legal opinion was finally concurred in by the Associate Finance. The Railways also contended that Once the completion Report was received and final decision taken to levy token damages, the balance amount was refunded to the firm and that refund in such a case does not require a formal request from the firm as per the extant procedure.

68. In spite of the observations made in the completion report of the bearings received from the firm that extreme inconvenience was felt by the Railways due to the delayed supply of bearings by M/s NEI as also that difficulty was experienced in getting the replacement supply from them against rejection, the action of Railways in returning the Liquidated Damages (Rs. 27.64 lakhs) recovered from the firm (NEI) earlier and levy of only token damages (Rs. 2.7 lakhs) is inexplicable. Even the Finance Directorate of the Railways had pointed out that the timely supply of these bearings would have reduced stabling of wagons for which 90% payment had been made to the manufacturers without obtaining any return from those stabled wagons for want of such free items-thus causing recurring loss to the Railways. Railways' argument that stabling of wagons was not due to the delayed of bearings alone and, thus, loss could not be pin-pointed In this case is hardly convincing since it was after all one of the contributing factors for stabling of wagons. The refund in the face of extensions granted to the firm subject to charging of Liquidated Damages and receipt of unqualified acceptance from the firm therefor, strengthens the doubts in the mind of the Committee in regard to the undue favour shown to this firm. The Committee do not also approve of the stand that where stabling is due to more than one cause, the financial loss cannot be apportioned. The Committee

recommend that in such cases steps should be taken to equitably distribute the loss instead of Railway absorbing the entire loss and the Railways should incorporate appropriate changes in the contract in order to do so, if so, advised by the Law Ministry.

69. According to the completion certificate, the supplies against the main order of 24000 bearings were completed in June 1985 and those against additional order of 7200 bearings in February 1985, i.e. four months before the main order was fully executed. By this method, the Committee note that the firm is reported to have executed the additional order of 7200 bearings in time and delay is shown against the original order only. The Committee desire to know the basis on which the Railways decided to allow completion of the additional quantity of 7200 bearings before completion of supply against the main order. The Committee are of the view that the date of completion of supply against the additional order should have been taken as June 1985 only, and not February 1985 according to which there was a delay in execution of the order by 4 months. The Committee recommend that the circumstances under which the firm was exonerated from liability for delayed supply on additional quantity may be investigated and appropriate action taken.

70. The Committee note that even though there are at least three communications clearly attributing stabling of wagons to delayed supplies of bearings by NEI (i) Chairman, Railway Board's letter to Secretary, Industry Ministry (ii) Railway's letter to NEI and (iii) official note on stabling of 727 wagons for want of bearing, the completion report indicates that the delayed supplies by NEI caused only "inconvenience" and the Railway accepted this without further investigation. It is also not clear whether the opinion of FA and CAO was received before the Railways decided to refund the damages recovered. The Committee recommend that the whole issue relating to damages suffered in this case may fully be reviewed afresh and the results intimated to the Committee.

Payment due to variation in foreign exchange rates

71. In terms of clause 11 of the contract with M/s. NEI for supply of 24000 bearings, the delivery was to commence immediately and was to be completed in equal monthly instalments by March 1983. First instalment of 7000 bearings should have been supplied by the firm by September 1982. The firm claimed compensation of Rs. 10.26 lakhs under the clause in the contract which provided for such compensation due to variations in

foreign exchange rates which occurred after 30 September, 1982. This claim was paid in August 1984 by the Railways although it should have been rejected because the delivery of supply against related foreign exchange release was delayed upto March 1983, beyond the stipulated months of September, 1982.

72. When asked to justify the release of the payment due to variation in foreign exchange rates, the Railways have stated that the contractual delivery period was March 1983 and not September 1982 and at the exchange rate variations upto March 1983 were only reimbursed to the firm and that the variation in exchange rate during the extended delivery period i.e. beyond March 1983 was not allowed to the firm. According to the Railways, as the contract did not stipulate any specific delivery dates for individual phases, delivery period in non-severable contracts is determined by the final delivery date and in view of this, statutory variations within delivery period like variations in exchange rate etc., are on purchasers accounts.

73. On being asked during evidence whether it was not a contravention of the contract if the firm did not supply the bearings on monthly basis as provided in the contract, the representative of the Railways stated that they gave a date of delivery for the entire quantity in the contract which they were executing for large numbers.

74. When enquired why the clause of delivery of bearings on monthly basis was provided in the contract, the witness replied :

“It is the intention of our requirement. It would be possible to explain in the contract. That ‘X’ number may be supplied by one date, so many number by the next date and like that, if we do that, then each of these dates become a separate contract.”

75. The Railways obtained legal advice of the adviser functioning in the Ministry in the matter subsequently and informed the Committee about it which, inter alia, pointed out as under :

“In this case, delivery was to commence immediately and to be completed in equal monthly instalments by March 1983. Delivery to start immediately loses its meaning when read with clause 17 of the contract. It is clear from clause 17 that certain items are to be imported from foreign countries for

manufacture of the contracted items and definitely there will be some time lag between placing of the contract and imported items reaching the factory premises of the contractor. In that case, delivery cannot be commenced immediately and delivery schedule cannot be adhered to in accordance with the delivery clause.

The other circumstances are that since the material is to be inspected by independent agency and it cannot be taken for granted that all the material submitted for inspection will be approved by the inspecting agency, it may be difficult for the contractor to make supplies of equal instalment in every month. The reason is that there may be delay on the part of the inspecting agency or large number of items may be rejected in the inspection. In this view of the matter, the contract is indivisible and not severable contract as supply of equal monthly instalments has been prescribed for purpose of manufacturing convenience and for the convenience of inspecting authorities."

76. As regards the difficulty in getting the phase-wise delivery date incorporated in the contract, the Railways have explained that the normal practice in Railway contract is to indicate terminal delivery dates, though monthly schedules are also stipulated for expediting and monitoring of supplies. Further, according to them, as contracts placed are generally of one year's requirement, no intermediate delivery dates are stipulated in Railway contracts. The Railways have further stated that firms also generally do not agree to such phase-wise delivery dates, because it operates harshly even in case of genuine delays due to problems of production, inspection and despatch beyond their control. Besides, according to the Railways it causes further delay because no inspection be carried out until the matter regarding the extension of delivery period is settled and "progressing" of the contract becomes complicated, even in case of genuine delays, with frequent need for request for extension of delivery period, issue of amendment to the firm and examination of liability to pay liquidated damages by firm.

77. The Committee are of the opinion that the firm, M/s. NEI was not entitled to any compensation due to variation in foreign exchange rates beyond September 1982 in respect of at least 7,500 bearings (comprising phase I programme) which should have been supplied by it by then as per

clause 11 of the contract. Thus, the claim for payment of Rs. 10.26 lakhs to the firm on this account should have been rejected because delivery of 7,500 bearings was delayed beyond the stipulated period. The Railways' argument that the delivery period was determined by the final date (March 1983) is unacceptable as the aforesaid clause had clearly provided that the firm was to complete the entire supply in equal monthly instalments by March 1983. The contention of the representative of the Railways during evidence that the contract would have become severable if the supplies had been made in phases by different dates has not been corroborated by their departmental legal advice. The Committee feel that monthly schedule was fixed in this case to ensure even flow to Wagon Builders for manufacture of wagons and the difficulties ought to be within the knowledge of the supplier when he accepted the offer. In the circumstances the Committee recommend that the entire case may be placed before law Ministry and their opinion intimated alongwith action taken thereon.

78. The Committee are also not satisfied with the reply of the Railways that there are practical difficulties in providing phase-wise delivery dates in the contracts entered into by the Railways with various firms. They feel that by incorporating such clause in the contract, it would be easier for the Railways to monitor timely delivery of the supplies both in terms of quantity and quality and take remedial action without having to wait for the data of completion of the entire period of supply.

Reimbursement of Excise Duty on imported component against the terms of contract.

79. The tender for the contract given by M/s. NEI contained the following clause relating to duties and taxes :

"Sales Tax, Excise Duty or other duties leviable will be charged on actual basis at the time of despatch."

80. At the time of initial evaluation of the tender, the tender Committee noticed that customs duty had been assumed at 73% by NEI whereas it was only 44% (Duty 40% plus surcharge 10%) and that the customs duty as claimed by NEI needed review. After the final negotiations were held on 19 October 1981, the correctness of customs duty at 73% came up for examination and the following note was recorded :

"The landed cost of the bearing is inclusive of Freight, Insurance (1/2%), port charges (1-1/2%), Customs duty at 73% as

indicated by the indigenous suppliers. One firm viz. M/s Timken has indicated the custom duty at 62%. However, M/s NEI who had imported these bearings earlier have advised that the updated customs rate is 73%. (It is also understood from JDS (W) that M/s PBI also indicated customs duty at 73% in the course of oral enquiry. The Customs Tariff Book also indicates duty @ 40% + 10% = 50%, Excise Duty (Countervailing Duty) @ 15.75% is leviable on the total price including duty i.e. on 150% = 23.75%. Therefore total duty comes to 50% + 23.75% = 73.75%)." ."

The above note would indicate that for the imported bearings, the excise duty had been assessed at 23.75% on imported cost (without adding customs duty) and a weightage of 73% over import price has been allowed for evaluation. (The correct percentage would however, appear to work out to 66.6% as customs and surcharge thereon would be 40% plus 10% of customs duty i.e. 44% only and not 50% as assumed)

82. Clause 6 of the contract with M/s NEI had inter alia specified that :

"This price is firm. It is inclusive of mounting charges of Rs. 35/- per cent and customs duty on the imported content but exclusive of excise duty on indigenous content and Sales tax. Excise duty and tax as applicable on the date of despatch of Roller Bearing Axle Boxes will be paid extra."

83. As per this clause, the firm was not entitled to get reimbursement of excise duty on the imported components of the bearings apparently because the imported cost had been evaluated after taking into account excise duty payable thereon. But the Railways, on a request from the firm reimbursed an amount of Rs. 77 lakhs as excise duty on imported component for 23,700 bearings. The aforesaid clause of the contract was modified by the Railways when the firm approached them on 30 April 1984 as their claim for reimbursement of Excise Duty was turned down by Northern Railway.

84. Justifying this payment, the Financial Commissioner of Railways stated during evidence that the clause 6 of the contract also provided that "Excise duty and tax applicable on the date of despatch of the roller bearing axles boxes will be paid extra."

85. When pointed out that while paying the Excise Duty on the finished product the relevant amount on the imported component should

have been deducted by the Railways, the witness explained that that was precisely the point raised by the Northern Railways but the party represented that that was a statutory obligation covered under the contract and they had paid the Excise Duty on the imported component and produced the letter from the Superintendent. Central Excise which inter-alia stated :

“It is further clarified that in your case the imported material or component parts are one of the raw materials for the manufacture of finished exciseable goods covered under rule T.I. 49 i.e. ball bearings which have a distinct name, character and use and as such Central Excise Duty is chargeable.”

86. The Railways have informed the Committee that the fact that these parts (imported) would attract Excise Duty was not clear at the time of finalisation of the contract. On being enquired whether it implied that their method of evaluation of offers was inadequate as imported components attracted both custom duty and excise duty, the Railways have explained that the main criteria for the evaluation of offers in this case was unconditional AAR approval and saving in foreign exchange. The question, therefore, of consideration of Excise Duty or Customs Duty for the purpose of evaluation would not have altered the evaluation.

Mounting of bearings on the Wheel sets

87. The relevant Clause 13 (c) of the contract with M/s. NEI regarding mounting of bearings on the wheel sets specified that :

‘ Mounting charges at the rate of Rs. 35/- (being part and parcel of total price) per roller bearing axle box will be paid after the roller bearing axle boxes have been mounted on to the wheel sets, the claim for which should be supported by a certificate from the Inspector that the roller bearing axle boxes have been satisfactorily mounted.’

88. Audit para points out that in terms of this clause of the contract, 100 per cent payment was released to the firm (M/s. NEI) on the basis of inspection and despatch documents but work of mounting of bearings lagged far behind. The firm failed to adhere to the Schedule and Railway suffered loss on this account. The Railways have justified this payment by saying that there was no wilful delay on the part of the firm and that the delay had occurred basically due to technical problems as this was the first time that such a work was being carried out.

89. The Railways have added in this connection that to pre-empt possibility of undue delays, a clause was stipulated in subsequent contracts, providing for holding back of 10% payment until completion of mounting.

90. However, the Railways have not been able to furnish the wagon builder wise position of unmounted bearings during the period 1982-83 to 1984-85 against this contract, as according to them, separate information for mounted and unmounted wheelsets in that period was not being maintained.

91. It is learnt from Audit that the Railways did not include similar clause in the contract No 79/RS(1)/874/550 dated 15 February 1979 placed for Procurement of cartridge bearing for BOY wagons and in this case, payment was released only after successful mounting of bearings. On being asked as to why Railways adopted different procedure in the case of contract for BOY wagons, they have explained that since the wheelsets were not being supplied by the same firm and since mounting depends upon availability of wheel-sets, correct surface preparation and providing necessary facilities by the wagon builders for mounting, it would not be fair and appropriate to lock up firms' money for this. The Railways added that the earlier contract for 3000 Nos. was a small order with mounting at one location where as the contract in question required mounting at different places. According to the Railways even in that case, the contract was subsequently amended for payment terms to permit 85% payment on proof of despatch and inspection i.e., only balance 15% was linked to mounting.

92. Modification of the contract at the instance of NEI resulting in reimbursement of Rs. 77 lakhs as compensation to them for the payment of Excise Duty on the imported component is another instance of indulgent attitude adopted by the Railways towards this firm. The admission of the claim based on a certificate from the Excise Department indicating that the Excise Duty was chargeable on the imported component of the bearings, without reference of the admissibility of the claim to arbitration as the price in the contract was specified exclusive of the Excise Duty on indigenous component only, is nothing short of financial imprudence shown by Railways in this case.

93. The Committee cannot accept the contention of the Railways that they were not aware at the time of finalisation of the contract that the imported parts would also attract Excise Duty because this is not the first occasion imports were made by Railways or by NEI. Further the evaluation note of tenders by the tender committee clearly indicates that the element of excise duty relating to imported bearings was duly included before

determining the price payable. What is more surprising to the Committee is that M/s. NEI themselves gave details as to how 73% of duty on import was arrived at and later they came forward pleading defects in the contractual terms which the Railways agreed with alacrity. Since the issue relating to exise duty was duly considered and evaluated by the tender committee and thereafter the contract terms were offered, which were duly accepted by M/s NEI, the Committee are convinced that there existed no case for alteration of the terms of the contract. In the circumstances, the Committee recommend that steps may be taken to re-examine the issue in consultation with Ministry of Law & Ministry of Finance and to recover the amount paid with interest.

94. Yet another instance where the Railways have shown laxity while dealing with this firm (NEI) is the release of 100% payment without the firm having mounted the bearings on the wheel sets as per the terms and conditions of the contract. The Railways reply that there was no wilful delay on the part of the firm is hardly any ground on which the payment could have been made to the private party without ensuring whether the desired work had been completed by it. It is inexplicable why the Railways made full payment in this case whereas against the earlier contract of 1977 for the procurement of cartridge bearings involving another party, the payment was released only after successful mounting of the bearings by that party.

Performance of bearings supplies by M/s. NEI

95. As regards the quality of the product supplied by M/s. NEI the representative of the Railways deposed during evidence that the orders were placed on the basis that the collaborators of the firm from the U.S. had given an unequivocal undertaking that the quality of the bearings or of the components thereof to the extent that they would be manufactured in India would be up to the standard of their manufacturing ability and that they would certify them as being of equal standard.

96. In reply to a query whether the bearings supplied by this firm were AAR approved, the witness replied in the affirmative and added that when that matter was taken up with the collaborator of this firm, they gave them (the Railways) a certificate to the effect that they themselves were AAR approved and, therefore the quality of the bearing was also AAR approved.

97. When enquired whether any bearing was dispatched to the AAR to ascertain whether that conformed to the standards laid down by the AAR, the witness replied "in terms of the collaboration, we believe that

Would be an arrangement between the collaborator and the man who is collaborating here."

98. These bearings have also not been forwarded to RDSO for testing as, according to Railways, once a firm is approved by AAR, no further testing is called for as per the procedure of AAR. In this connection, the representative of Railways contended during evidence that they had thousand of bearings of that type already in service for the past six years and their experience with them had been satisfactory.

99. However, the Chairman, Railway Board had observed in this connection in June 1985 that "NEI was not measuring upto other manufacturers and their reliability of bearings as function of age is below par while it is in our interest to encourage indigenous industry, it is also very much in Railways' interest to see that bearing failure are reduced and cost of maintenance minimised." As regards NEI's supplies of cartridge bearings, the Chairman, Railway Board observed that "since these are only a few years old it is too early to declare them good and safe" He suggested that "close monitoring of the performance of NEI and other bearings fitted on BOXN wagons be introduced immediately. It was not sufficient to specify that AAR approved bearings be only purchased. The AAR procedure for in-service inspection of bearing should be duplicated by RDSO."

100. The Chairman, Railway Board had also recorded a note on 3 June 1985 as under :-

"(4) Recently on my visit to Southern Railway, I was told that they have maximum failures with NEI bearings. All these facts should be advised by DME to NEI in writing also drawing their attention to the points made in the RDSO's letters dt. 27.5.85, 31.5.85 and 1.6.85 placed in this file they must look after Indian Railways and supply quality products.

(5) We may also get proper feed back on the bearings they have supplied for BOX 'N' wagons which are in use."

101. According to the Railways the then Chairman, Railway Board's observations appear to have been based on some stray complaints, as the data collated in the wake of the said remarks, from all over the field clearly indicated that the NEI bearings were performing well and the failure rate was insignificant. Till 1987, a total of 2,02,296 bearings were

in service against which there were only 675 failures, representing a failure rate of only 0.33%, the Railways have observed. Further, according to them Railways the monitoring of NEI bearings was started from 1983 itself through periodical BOXN meetings and that these had been found to be generally satisfactory, though in view of the remarks made by the Chairman, Railway Board the monitoring was intensified. With the increase in population in 1985, the Railways considered it necessary to set up a regular monitoring system and consequently instructions to Railways were issued by RDSO in July 1985.

102. Audit has brought to notice in this regard that the Railways obtained 1445 bearings for maintenance account and that no performance report was prepared by RDSO upto December 1988 except routine monitoring through wagon meetings. Further according to minutes of the XIX BOX 'N' Meeting held in Board's office on 29th and 30th August 1988, the RDSO has been instructed to institutionalise "a system of positive entry in the inspection records of wagon builders regarding no damage to outer cup of cartridge bearings" and also to "indicate steps to build up a data base for cartridge bearing failures". In the minutes of the meeting, it has also been recorded that the number of failures of cartridge bearings on Central Railway and Eastern Railway was a "Cause of concern" and that RDSO may check a few cases and recommend measures to be taken.

103. In reply to a question whether AAR approved procedure for in-service inspection of bearings has been introduced on Railways as suggested by Chairman, Railway Board, the Railways have explained that in AAR Manual Cartridge Bearings are classified as "No Field Lubrication" bearings and do not require any in service inspection/attention whatsoever upto a service period covering 5,08,000 miles, after which the bearings are required to be examined in a workshop having stipulated facilities or by the manufacturer. However, certain precaution are stated to be have been laid down in particular circumstances like derailment, over heating etc. Based upon AAR practices, comprehensive instructions for marking the cartridge bearings for determining the in-service life, examination of derailed wheelsets, warranty inspection and claims, greasing, repairs and inspection, handling, loading-unloading and reprofiling have been issued. The instructions stipulate visual check of cartridge bearing reprofiling of wheels which is more than what is stipulated in AAR Manuals.

104. The Committee learnt that Zonal Railways had reported large scale failure of cartridge bearings supplied by M/s. NEI within warranty

period and Railway Board had asked the firm to replace the defective lot of cartridge bearings vide their letter dated 30 July, 1987. The Railways have however, not been able to make available to the Committee the details of bearings failure within and beyond warranty period, contract-wise, as according to them, these statistics are not maintained in the Board's Office.

105. In reply to a query the Railways have asserted that subsequent orders were placed on the firm (NEI) after evaluating the performance of the bearings.

106. As already observed, large orders were placed on a firm M/s NEI having no experience of manufacturing Roller Tapered Bearings, in preference to reputed foreign unconditional AAR approved firms and that too at a higher rate to ensurge indigenisation and to save scarce foreign exchange to the extent possible. For quality aspect which got back seat in Railways' consideration while finalising the contract, a certificate from the proposed unconditional AAR approved collaborator of the firm that they would be certifying the bearings produced by M/s NEI as being equal of their standard was considered sufficient. It is, therefore, no surprise that the NEI bearings did not come up to the expectation when put in service. This is evident from the observations of the then Chairman, Railway Board made in June 1985 that "NEI was not measuring upto other manufacturers and their reliability of bearings as function of age is below par". The Railways' pleading that the Chairman's remarks were based on stray complaints and the collated data from all over the field had indicated that NEI bearings were performing well, is unacceptable in view of the large scale failure of NEI bearings within warranty period reported by the Zonal Railways and lack of proper monitoring facilities, as is evident from the minutes of XIX BOX 'N' meeting held on 29 and 30 August 1988. Besides, Railways themselves had asked the firm to replace the defective lot in July 1987. Even the failure rate (0.33%) calculated by Railways is based on the total bearings supplied by all the manufacturers and not the NEI alone. Further, in the absence of records of contract-wise failure of bearings within the warranty period the claim of Railways that future contracts were placed on the firm after evaluating its performance and that they had been regularly monitoring the performance of the NEI bearings hardly carries any weight. The Committee feel that the firm should not have been given large orders in the first instance and having done so, a sample on receipt of first instalment should have been despatched to AAR to ascertain the quality thereof and similarly another to RDSO for necessary testing etc. so that the question of quality could be taken up with the firm in time for any necessary

remedial action. What is more surprising is the fact that these measures were not adopted even when the then Chairman, Railway Board had commented adversely about the quality of the product as early as in June 1985. Lack of adequate emphasis on quality earlier and total inaction subsequently in getting the same evaluated by the appropriate agencies depict the Railways' functioning in regard to procurement of the vital components of the Rolling Stock.

107. The Committee are led to inescapable conclusion from what has been discussed hithertofore that undue benefits were extended to M/s. NEI at the various stages of execution of orders for supply of 31,200 roller cartridge tapered bearings. Placement of large orders (2,4000 Nos.) without the firm having any previous experience and without the collaboration agreement having been signed; placement of additional order (7,200 Nos.) and refund of Liquidated Damages despite considerable delay in supplies; compensation due to variation in foreign exchange rates; reimbursement of excise duty on imported components against the terms of the contract; release of additional foreign exchange wrong compilation of delay in supply for additional order, etc. are some of the examples thereof. They, therefore, recommend that the entire matter be investigated by an as independent high-powered Committee with a view to fixing responsibility and taking necessary action against all those found guilty. No further orders on this firm should be placed till the findings of this Committee are known and the quality of the bearings already supplied by it is got evaluated from RDSO and AAR. The Committee would like to be informed of the precise action taken by the Railways in this regard.

108. Apart from selecting the best offers it is equally important to ensure that various clauses comprising terms and conditions of the contract are meticulously and unambiguously drafted after taking into consideration all the relevant aspects. In this particular contract with M/s. NEI, the Railways have contended that the phrase 'with fully indigenous contents' in clause 7 was inadvertently included necessitating deletion thereof subsequently. Similarly while reimbursing the excise duty to the firm on the value of imported components on the supplier's representation, the relevant clause 6 was amended later on. It has also been contended by the Railways that although clause 11 of the contract stipulated immediate supply of bearings in equal monthly instalment, they do not consider the clause as a legally enforceable one. The Committee suspect that some clauses of the contract were deliberately made ambiguous so as to give the firm undue advantages

later on. The Committee desire that Railway Board should ensure that terms and conditions of such major contracts in future are carefully formulated, cleared by the legal wing and are approved at the Board's level. The implications of all the clause should also be made explicitly clear in the contracts so that firms/parties are unable to derive any undue benefit from any ambiguous clause obviously in collusion with unscrupulous officials.

NEW DELHI;

6 April, 1989

16 Chaitra, 1911 (Saka)

AMAL DATTA

Chairman

Public Account Committee

APPENDIX I

(Vide para 4)

Avoidable Payment on Procurement of Cartridge tapered roller bearings. Audit Para

For procurement of cartridge bearings for BOXN wagons the Railway Board invited global tenders in January 1981, against which offers from two indigenous firms 'A' and 'B' and from five foreign firms were received.

After conducting negotiations, orders were placed in July, 1982 for 8000 bearings on an Italian firm at the rate of Rs. 2962; 8000 bearings on a Japanese firm in October 1982 at the rate of Rs. 3281; and 24000 and 8000 bearings on indigenous firms 'A' and 'B' in June 1982 and in October 1982 respectively at the rate of Rs. 3385.

While the supply was completed in time by foreign firms the performance of indigenous firm 'A' was poor despite grant of a number of concessions as below :

- (1) It was given an additional order in April, 1984 at the same rate, for 7200 bearings beyond the initial 24000. It, however, completed the supply only after two years. This delay entailed large scale stabling of wagons which were otherwise complete. The firm was not penalised and an amount of Rs. 27.64 lakhs recovered as liquidated damages was later refunded to it.
- (2) Initially the contract with it provided for release of foreign exchange of Rs. 282 lakhs for 24000 bearings and for the additional supply of 7200 bearings no foreign exchange was to be released. However, the contracts were revised to provide more foreign exchange and eventually the firm secured additional foreign exchange of Rs. 55.28 lakhs for the entire supply, defeating the objective of indigenisation at higher prices.

- (3) The firm claimed compensation of Rs. 10.26 lakhs under the clause in the contract providing for such compensation due to variations in foreign exchange rates. This claim was paid in August 1984 by the Board, although it should have been rejected because the delivery of supply against related foreign exchange release was delayed up to March 1983, beyond the stipulated month of September, 1982.
- (4) The firm failed to discharge its responsibility to mount bearings supplied on wagons even after receiving full payment for supply. Consequently, there was considerable delay in commissioning of wagons which were otherwise complete.
- (5) Countervailing duties of Rs. 77 lakhs on imported components were borne by the Railways though the contract did not impose this liability on the Railways.
- (6) The firm did not produce American Rail Road approval for its product though considered very essential under safety requirements. Lack of such approval was cited by the Railway Board as the reason for procuring only 8000 instead of 16000 bearings from the Italian firm which had offered the lowest rate of Rs. 2962 per bearing in 1982.

APPENDIX II

(Vide para 12)

Details of offers from the firms after negotiations

| S. No. | Name of firm | Landed price (computed approx. in Rs.) incl. mounting charges | F. E. content (in Rs.) |
|--------|--|--|--|
| 1 | 2 | 3 | 4 |
| 1. | SKF (SKEFCO Branch) | (i) 2863.66 (for 32000 Nos.) | 1568.88 (C&F) |
| | | (ii) 2961.68 (for 16000 Nos.) | 1627.65 „ |
| 2. | Sumitomo (Koyo Branch) | (i) 3281.45 (for 24000 Nos) | 1785.67 |
| | | (ii) 3389.87 (above 24000 to 40000 Nos.) | 1846.57 |
| 3. | NEI (BRESCO Branch) | (i) 3385.00 & Rs. 84.67* (Phase I of indig- nisation from first supply) =3434.67 (ST extra) | 1621.38 |
| | *(Excise Duty on indigenous content) | | |
| | **ED Rs. 194.31 | (ii) 3460.00** (Phase II of indi- genisation and phase III) =Rs. 3719.31 (ST extra) | 1263.11 (Phase II-i.e. after 6 months from date of order |

| 1 | 2 | 3 | 4 |
|----------------------------|---|---|--|
| | | | 768.46 (Phase III i.e. after 9 months from date of order) |
| 4. Timken | | (i) 3548.84 (for delivery upto June' 82) | 1952.29 |
| | | (ii) 3628.26 (for delivery beyond June' 82) | 1996.73 |
| 5. PBI (FAG) | | 3570.72+ED on ind. content (ST extra) | 1908.50 |
| 6. Aventi (Late) (NSK) | | 3640.85 | 2040.77 |
| 7. Bearing Engrs. (FAG) | | 3948.26 | 2208.82 |

APPENDIX III

(Vide para 18)

Schedule of indigenisation programme of NEI & PBI.

| | <i>NEI</i> | <i>PBI</i> |
|--|---|--|
| (1) Date of commencement of supplies | Jan' 82-FOB (Immediate on opening (L/C) i.e. April' 82 FOR. | Oct' 82 (FOR) |
| 2.1 Items indigenised at the 1st stage. | (1) Side Frame Rey (2) End Caps (3) Backing ring (4) Locking plate (5) End cap bolts (6) Seal ring | Grease filters End Caps Backing ring. Locking plate. Cap Screw Cap screw seal ring |
| 2.2 Import content 1st stage | \$ 173 (Rs. 1897 Rs. 9.20 = \$ 1) | DM 477 (45.7% import content) (Rs. 1994, Rs. 4.18= 1 DM) |
| 3. Indigenisation 2nd stage | July' 82 (FOB) i.e. Oct' 82 (FOR) | In 1983-84 i.e. 30.5% import content (CIF value as a % of total) |
| 4.1 Items to be indigenised in 2nd stage | (a) All items in Phase I. (b) Cone | Details not furnished. |
| 4.2 F.E. requirement II stage | \$ 135 | Not indicated. But from the proportion of % of indigenisa- tion from 54.3 to 63.5%, should be DM 351. |

| | | |
|---------------------------------------|---|--|
| 5.1 Indigenisation stage III | Oct'82 (FOB) 1.e. Jan 82 (FOR) | 1984-85 |
| 5.2 F.E. content III stage | \$ 43 Items all items in phase II & adaptor. | Not indicated, but from further increase in indigenous content from 63.5% to 73% can be estimated as DMr281. |
| 6. Further process of in figenisation | Progressively 96%-schedule not given. | 1985-86—80.3% Ind. 1986-87—91.5% Ind. 1987-88—97.5% Ind. |

APPENDIX IV

(Vide para 38)

Extract of para 49/n of Rly. Bd's file No 182/RS(1)/874/2

Vide their letter dated 3-4-87 placed at S.No. 87 M/s NEI have sought for extension of delivery date for completing supply of the outstanding quantity of 6500 nos. of cariridge bearings. These material are assentially required for wagon production. The demand for the year 84-85 is about 30,000 nos as vatted by Finance and the quantity or order is only the above 6500 nos. from NEI and 7,200 from P.B.I. Accordingly, it is proposed to extend delivery date with LD and denial clauses as 727 BOXN wagons are lying stabled for want of the items.

In view of the position brought out above, it is proposed to operate the 30% option clause and order for 7,200 nos. of NEI at the contracted price of Rs. 3385 each providing for foreign exchanee of \$ 83 for bearings as applicable for Phase III. Against a tender opened on 27.2.84 the firm had quoted a price of Rs. 3975 with foreign exchange requirement of \$ 85 and P,B.I. had quoted a price of Rs. 4050 foreign exchange to be indicated later.

Thus the price of the present contract is lower. After releasing of orders about 3 weeks will be necessary to process release of foreign exchange and firm will obtain L/C. After obtaining the imported items which will be available after 4 months after issuing L/C. Supply can be commenced only after 5 months after release of order. Thus it is necessary to release the 30% immediately.

DFA-II is accordingly put up permitting delivery of 7,200 nos to commence in Sept/Oct. 84. and completed in 3 months thereafter. As regards PBI DFA. III excercising option clause is also put up for approval. File No. 83/RSI/874/3 P.B.I. linked below.

Sd/-
JDS (W) 5.4.84

APPENDIX V

(Vde Para 46)

Copy of the contract with M/s NEI

**Government of India (Bharat Sarkar) Ministry of Railways
(Rail Mantralaya) (Railway Board)**

No. 81/RS(1)/874/1(TC)

New Delhi. dated 5.6.82

**M/s. National Engineering Industries Limited,
(Railway Division),
JAIPUR**

Dear Sirs,

SUB : *Contract No. 81/RS(1)/874/2/622 dated 5.6.82 for the manufacture and supply of Cartridge Tapered Roller Bearings against Tender No. 81/RS/1/874/1 (TC).*

Further to Ministry to Railways (Railways Board's) advance acceptance telegram No. 81/RS(1)/874/1(TC) dated 29.4.82 and your acceptance conveyed vide your letter dated 12.5.82, the Ministry of Railways (Railway Board) on behalf of the President of India, hereby place on order on you for the supply of the following stores. The above mentioned contract number has been allotted for this order. The contract will be governed by the conditions and specifications detailed hereunder :

- | | |
|--|---|
| 2. Purchaser | The President of India |
| 3. Name and address of the contractor | M/s. National Engineering Industries Ltd., Jaipur |
| 4. Contractor's offer No. and date | (1) No. BT/RO 204 dated 31.7.81 (2) No. BT/RO 204 dated 20.10.81 |
| 5. Particular of the Order | |

| P EM No. Year | Description | Specifications and Drg. No | Quantity Nos. | Rate per unit for Jaipur |
|---|--|---|--------------------------|---|
| Pt. of item No. 407 of 1981- 82. | AAR approved Taper Roller Cartidge Bearing complete suitable for wagon stock with cast steel bogies planked/ plankles with friction snubbers for 20.3 tonne/ 22.9 tonne Axle load application consisting of | R.D.S.O.'s Schedule of Technical requirements No. AB/RB-18-81. | 24000 | Rs. 3385/- |
| | (i) AAR approved Roller Cartridge Bearings complete. | | | |
| | (ii) Wide jaw adaptors with retaining nut and bolts | | | |
| | (iii) Side frame key with self locking nut and bolts. | | | |

The Foreign Exchange content for first 7500 Nos. would be US \$ 173.65; US \$ 135.28 for the next lot lot of 7500 Nos and US \$ 83.49 for balance quantity of 9000 Nos. Release of uncovered foreign exchange will follow.

6. PRICE

(a) This price is firm. It is inclusive of mounting charges for Rs. 35/- per set and customs duty on the imported content but exclusive of excise duty on indigenous content and sales tax. Excise duty and tax as applicable on the date of despatch of Roller Bearing Axle Boxes will be paid extra. Variation in the rate of customs duty, excise duty and sales tax during the originally stipulated delivery period, including the changes in the Finance Bill 1982-83, will be to purchasers account. The purchaser will not, however, be responsible for the payment of taxes mentioned above paid under misapprehension of law.

(b) This price also includes your commission on imported content, if any.

7. *Option.* The purchaser reserves the right to increase the ordered quantity upto a maximum of 30 percent with fully indigenous content on the same price, terms and conditions during the currency of the contract for which suitable extension in delivery period will be allowed.

8. *Terms and Conditions.* The contract shall be governed by the General Conditions of Contract (Annexure-I) (Copy enclosed), in so far as these are not in consistent with the conditions given below :

9. *Place of Manufacture.* Jaipur (Rajasthan)

10. *Consignee.* The Roller Bearing Axle Boxes shall be despatched by M/s. NEI to the respective consignees within or outside the State as per directions issued by the Controller of Stores (BI), Eastern Railway, Calcutta or any other officer authorised by him on his behalf and the Railway Receipt sent to the respective consignees by registered post. The freight shall be on 'Railway Account.'

11. *Delivery*

Delivery to commence immediately and to be completed in equal monthly instalments by March, 1983.

Mounting on the wheelsets at the consignee's and shall be at your expenses and responsibility.

12. *Grease to be used.* ARAPAN RB 320 will only be used.

13. *Payments*

Payment subject to recoveries, if any, under "Liquidated Damages" Clause 21 of the General Conditions of the contract, will be made as under :

(a) 100 percent of the price including Excise Duty duly supported by Gate Pass but excluding mounting charges of Rs. 35/- per roller bearing axle box will be made after inspection and despatch to the consignee, the bills to be supported by the Inspection Certificate and proof of despatch, viz. Railway Receipts. If the original Railway Receipt is sent to the consignee direct, a certified or photostate copy thereof may be furnished to the Paying Authority along with the bill. The above payment will be made by the Paying Authority against bank guarantee of Rs. 1 lakh from a recognised Bank acceptable to the Purchaser to cover the guarantee period

of 24 months as per clause 9 of the General Conditions of the contract, from the date of delivery of the roller bearing axle boxes. In case of local deliveries, payment will be made based upon the receipt notes given by the consignee.

(b) In the event of any claim under the warranty/guarantee clause exceeding Rs. 1 lakh, recovery can be made from any outstanding dues against this contract or any contract in respect of which the President of India is the Purchaser.

(c) Mounting charges at the rate of Rs. 35/- (being part and parcel to total price) per roller bearing axle box will be paid after the roller bearing axle boxes have been mounted on to the wheelsets, the claim for which should be supported by a certificate from the Inspector that the roller bearing axle boxes have been satisfactorily mounted.

(d) Payment in (a) and (c) above shall be subject to the deduction of any amount for which the contractor is liable under this contract or any other contract in respect of which the President of India is the Purchaser.

14. The payment will be arranged by the F.A. & C.A.O., Northern Railway, Baroda House, New Delhi.

15. *Inspection*

(i) The inspection will be carried out by Director General, RDSO, Manak Nagar, Lucknow-226011 or his authorised representative, who will also issue the necessary inspection certificate.

(ii) Mounting : Senior Inspecting Officer, RDSO, Manak Nagar, Lucknow Additional Director Wagon (I&L) RDSO, Lucknow CME's All Indian Railways or their authorised representatives will issue mounting certificates.

16. *Service Engineer*

(a) The contractor shall make available at their own cost competent technical personnel for mounting the Bearing on wheelsets and for any related technical assistance as may be necessary from time to time during the warranty period.

(b) The contractor will give adequate training to Railway staff for cleaning, regreasing, routine maintenance, overhauling and repairs of bearings.

(c) The contractor shall render technical assistance at the time of regreasing outside the warranty period.

17. *Imported Items*

The imports will be strictly restricted to such items as are not available from indigenous sources. Firm's application for the import of such items shall be submitted within 15 days of the date of this order to the purchaser. Necessary foreign exchange has, however, already been released on the basis of your offer for the three phases of indigenisation programme. Advice regarding additional F.E. for phase III will follow.

18. *Warranty.*

Warranty as stipulated in clause 9 of the General Conditions of contract would be for 36 months from the date of placing in service at ultimate destination in India.

19. The contract is issued by order and in the name of the President of India.

20. Please convey your unqualified acceptance addressed to the President of India through Director, Railway Stores, Ministry of Railways (Railway Board), New Delhi endorsing a copy to the FA&CAO Northern Railway, Baroda House, New Delhi, Inspecting Authorities and C O.S. (BI), Eastern Railway, Calcutta.

Yours faithfully,

Sd/-

(M.V. Ramani)

Joint Director Stores (W), Railway Board
for and on behalf of the President of India

No. 81/RS(1)/874/I(TC)

New Delhi, dated 5.6.82

With

Copy together with a copy of the above referred contract is forwarded for information and necessary action to :

1. Director General, RDSO, Manak Nagar, Lucknow-226011.
2. Director General, Standards (Inspection), RDSO, Lucknow.
3. FA&CAO, Northern Railway, Baroda House, New Delhi 2 spares).

4. **Controller of Stores, All Broad Gauge Railways.**
5. **FS(1), M(N), RS(B), Acc. I (BC), RS(WTY) Branches, Railway Board.**
6. **Additional Controller of Stores (BI), Eastern Railway, Calcutta (with 5 spares).**
7. **Jt. Director Wagon (I&L) RDSO, Rail Bhavan N. Delhi.**
8. **General Manager (Mech.), All Indian Railways.**
9. **F (F. Ex) with ref. to No. 82/F (F. Ex) 10/5(B) dated 23.4.82.**

DA : As above

Sd/-
(M.V. RAMANI
Jt. Director Stores (W)
Railway Board

No. 81/RS(I)/874/11(TC)

New Delhi, dated 5.6.82

Copy forwarded to the Comptroller & Auditor General of India (Railway Wing), Mathura Road, New Delhi (with 5 spares).

Sd/-
for Financial Commissioner,
Railways

APPENDIX VI

(Vide para 59)

*Copy of Chairman, Railway Board's D.O. No. 83/RS (B)/952/19
dated 18.2.84 to Shri D.V. Kapur, Secretary, Heavy Industry.*

I quite appreciate your anxiety with regard to the increase in stabling of wagons. I also share your anxiety in the matter and would always like to see this figure at nil.

You may have noticed that it is mainly on account of CTRB where I regret that the local NEI have failed more than PBI. Recently, a meeting had also been held with the representative and while PBI's capacity is rather low it would appear that as far as NEI is concerned, it is more a failure by the manufacturer to take ample precautions to develop adequate sources so much so that unless we import at least 3 to 6 months requirements of bearings and keep as emergency stock. I am afraid with the very limited and monopolistic bearing manufacturing capacities to which the wagon industry in India is tied down repetition of this is bound to happen.

In this connection, if you agree, based on our past experience we should get some CTRB as these are very critical and essential spares needed to cover the present crisis and to keep something in hand to avoid a recurrence.

With warmest regards.

APPENDIX VII

(Vide para 59)

*Copy of Railway Board's letter No. 82/RS (I)/874/2 dated 7.8.84
to NEI.*

Sub : Delay in mounting of cartridge bearings.

I am constrained to bring to your notice the delays in mounting of CTRBs at various wagon builders' premises. Coupled with delay in supply of cartridge bearings, the delay in mounting has further aggravated the situation leading to heavy stabling.

2. I would like to draw your attention particularly to delay at Modern Industries. This firm had collected the mounting tools from Raipur Workshop and were allotted 400 bearings which should have been supplied to them in the month of May itself. These bearing were supplied in July. Your mounting team started their mounting work and your Shri Sabarwal met the undersigned at the M.I. which he promised to do so by 11th July and then arrange to send team to CIMMCO to whom also 400 bearings were allotted. Instead of completing the work at MI and proceeding to CIMMCO the mounting team went away on 9th/10th July 1984 leaving the work unfinished. This resulted in Stabling of wagons in July, both at MI as well as at CIMMCO. Subsequently, it was learnt that mounting team will report at MI on 23.7.1984 but till date they have not reported there. Due to this not a single wagon could come out of CIMMCO in the last month.

3. It is requested that suitable action be taken to streamline the mounting at various wagon builders premises. Since 3 tools are available at least 3 mounting teams could be deployed so that the work goes on smoothly.

4. Due to these delays, in future it is proposed to release payment only after completion of mounting instead of present system to payment on proof of despatch inspection.

With regards.

APPENIX VIII

Statement of observation/Recommendations.

| Sl. No. | Para No. | Ministry/ Deptt. | Observation/Recommendations |
|---------|----------|------------------|---|
| (1) | (2) | (3) | (4) |
| 1 | 31 | Railways | Consequent upon the decision of Railway of 1981 to manufacture BOXN Wagons, the need for procurement of roller tapered bearings arose for which Railways floated global tenders in January 1981. Scrutiny of tenders opened in August 1981 revealed that offers were for 7 brands from 14 firms. The offers received against the tender were stated to have been evaluated by Tender Committee based on the criteria recommended by RDSO. According to their criteria, firms with unconditional AAR approval could be given unlimited orders and those with conditional approval could be given order at the most for 8000 Nos. Out of the Seven firms called for negotiations, M/s. Sumitomo and M/s. Timken had unconditional approval; M/s. SKF, M/s. Avanti and M/s. Bearing Engineers (FAG) had conditional approval; and M/s. NEI and M/s. PBI had proposed collaboration agreement with BRENCN/ USA (Unconditional AAR approved) and FAG (Conditional AAR approved) respectively. Whereas the foreign collaborator, M/s. FAG, (having only conditional AAR approval) of M/s. PBI (indigenous firm) was invited for negotiation, it is not clear why that of M/s. NEI viz. BRENCN/ USA (having unconditional AAR approval) was not so invited and negotiations were hon held with them. |

2 32 Railways Revised offers received from these seven firms in the wake of the negotiations held with them revealed that the lowest offer was from M/s. Sumitomo; then in the order was the firm M/s. NEI; and so on. Out of the requirement of 40,000 orders for 24,000 bearings were placed on M/s. NEI and 8000 bearings on M/s. PBI although both were yet to sign agreements with their foreign collaborators at that time and yet to be granted industrial licence. The Railways have contended that while recommending these orders, the main consideration which weighed with them was to promote indigenisation of the product and to save foreign exchange. The indigenisation angle to the offers of Sunitomo and Timken (both unconditional AAR approved firms) was not given any weightage on the plea that their indigenisation process would be time consuming. It is apparent that the remaining 8000 Nos. had to be ordered M/s. Sumitomo (Japan) as the placement of 32000 Nos. order on the indigenous firms was the maximum they could supply keeping in view their proposed production capacities upto 1982-83 (24,000 as of NEI and 10,000 as of PBI). The Committee note with surprise that though the Tender Committee had conceded that M/s. Sumitomo had offered the best delivery terms and had the necessary unconditional AAR approval, even the 50% option clause suggested by the Tender Committee and Finance Wing of the Railways to be included in the agreement with M/s. Sumitomo was also eventually deleted. The lowest offer of M/s. SKF (conditionally AAR approved) was not even considered by the Tender Committee but the firm was given orders for 8000 Nos. of bearings over and above 40,000 bearings when the firm represented to Railways subsequently.

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3 33 Railways

The Committee have been given to understand that apportionment of larger quantities to Indigenous firms at higher rate was recommended on the basis of phased programme submitted by them. The Committee are however, constrained to point out that placement of large orders on indigenous firms was contrary to the recommendation of RDSO which had prescribed a quantity restriction of 3336 bearings on the indigenous suppliers. Even the Adviser (Finance) in the Railways had expressed doubts about the capacity of the indigenous firms to meet the requirements of Railways for 1982-83 and had suggested redistribution of tender quantity and incorporation of optional clause in the contracts with the foreign firms to safeguard against any slippage by the indigenous firms. The contention of the Railways that the foreign collaborator of M/s. NEI (who had been given the bulk of the order) had indicated that they would be under-writing the quality of bearings manufactured by NEI as of their own and had agreed that components manufactured by the Indian collaborator would be stamped BRENCO is hardly convincing as at that time M/s. NEI had not even signed the collaboration agreement with them. While the Committee appreciate the anxiety of the Railways to see that the imports are not increased at the cost of indigenous development, but it is more important to ensure that the Railways' own manufacturing plans are not delayed in an attempt to procure certain components from indigenous sources. Indigenisation of a product is usually slow. This has not been kept in view by the Railways while placing bulk orders for the roller tapered bearings on the indigenous source as a consequence of which supplies by M/s. NEI were delayed by nearly two years affecting the production schedule of BOXN

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Wagons considerable (as discussed later on in this report) whereas other firms more or less carried out the orders in time. Further, the Committee could not be informed to what extent M/s. NEI, who had promised complete indigenisation after completion of supply in three phases of the contract under reference, has ultimately been able to achieve indigenisation. The Committee are surprised that the high import content (60%) in subsequent contracts handled by the firm has been defended by the Railways on the grounds that those contracts were awarded to the firm against global tenders as per IDA guidelines and offering of indigenous product would have rendered the firm uncompetitive against international bidders. The Committee are inclined to conclude that purposes with which orders were given to indigenous firms, of promoting indigenisation and saving of foreign exchange particularly to M/s. NEI, have not been fully achieved. The Committee would like the Railways to draw appropriate lessons from this case and deal realistically with all future indigenisation programmes and schemes so that its own major production schedules are not unnecessarily hampered as happened in this case.

4 34 Railways

The Committee note in this regard that at the very time when negotiations were being held for procurement of these tapered roller bearings, NEI were not adhering to the prescribed time schedule in another contract for supply of a similar type of roller bearings for which also the collaborators of NEI were BRESCO. The Committee are surprised to note that notwithstanding this position and also the caution expressed by the Finance Wing of the Railways, the Railways for unstated reasons placed so much faith in the offer of NEI and modified the recommendations in such a way so as to tilt the scale in favour of NEI.

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| 5 | 35 | Railways | <p>Notwithstanding their rates being high, the basic consideration for placing the faith in NEI, according to Railways, was the reduced outgo by way of foreign exchange. The Committee note in this regard that the foreign exchange components agreed to at the first, second and third phases were to the extent of \$ 173, \$ 135 and \$43 per bearing. As, however, even in subsequent phase the foreign exchange component was reported to be to the extent of 60%, the Committee desire to be informed as to how M/s. NEI met the foreign exchange needs in excess of the admissible level according to terms of agreement and recommend that an investigation be made as to whether excess foreign exchange has been released to the firm and if so, the reason therefor and if not, how the firm met its foreign exchange requirements.</p> |
| 6. | 44 | Railways | <p>As per contract with NEI. 24,000 roller tapered bearings were to be supplied by the firm by March 1983. However, it could supply only 10,852 bearings by the stipulated date. Despite the delay in supply of the bearings, by the firm, it was given an additional order for 7200 bearings in April 1984 by which time 6000 bearings were still to be supplied by the firm against the initial order. The Railways have defended their action by saying that they needed more bearings and option clause with the firm M/s NEI providing for the provision for placement of 30% additional order was utilised. According to the Railways, inclusion of the option clause in the contract with the Italian firm was not thought of because the firm had got only conditional AAR approval and in case of Japanese firm, although having unconditional AAR approval, no option clause was included because there was no intention, abinitio, to order any further quantity on it because of foreign exchange consideration. The Committee</p> |

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are of the opinion that the option clause should have been included in contracts with all the firms especially with foreign firms who eventually carried the orders in time and had the necessary unconditional AAR approval. Even the Railways have conceded that by mere including the option clause in the contracts with the firms no financial liability would have been involved. By doing this any further placement of order could have been well anticipated and executed before expiry of the option clause with any of the firms which could have supplied the bearings in time. As regards the contention of the Railways about the foreign exchange involved the Committee consider that it would not have made much difference because ultimately foreign exchange was also spent though to a lesser extent in getting the additional bearings from NEI and the main consideration which should have been weighed with the Railways was timely supplies and proven quality of bearings.

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Railways

The Committee find that at the time of the issue of tender notice in January 1981, the quantity required by the Railways was 24,000 bearings. At the time of opening of the tenders in August 1981, the requirement of the Railways increased to 40,000 bearings. While deciding the firms to whom the orders were to be placed by the competent authority in January 1982 the requirement remained at 40,000 level. However, in the wake of the representation submitted by a firm the quantity required was revised to 48,000 bearings a month later i.e. in February 1982. The Committee feel that the Railways kept on increasing the requirement without making proper assessment of the bearings required. The Committee also feel that the actual deliveries by the originally stipula-

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ted date. March 1983 may have been not more than 24,000 bearings, the same as was originally envisaged and in March 1983, the overall position of bearings was considered satisfactory, despite substantial shortfall in supply by NEI. The Committee would, therefore, recommend that the basis on which the demand was raised to 48,000 should be investigated, particularly because (as later paras would indicate), the Railways have claimed that no quantifiable loss was suffered¹⁷ due to delayed supplies by NEI and no claim for liquidated damages was made against the firm.

- 8 55 Railways Release of foreign exchange (Rs. 55.28
Finance lakhs) for the procurement of additional 7,200
(Economic bearings has been defended by the Railways on
Affairs) the ground that the option clause formed an
integral part of the contract and was covered by
the same terms and conditions as were applicable
to the 3 phases of the contract. However, the
Railways have conveniently overlooked the fact
that option clause in the contract had specifically
mentioned that the purposer reserves the right to
increase the order "with fully indigenous contents"
thus implying clearly that no foreign exchange
was to be sanctioned therefor. The Railways'
contention that the phrase "with fully indigenous
content" was erroneously included in the contract
due to mis-reading of the recommendations of the
Tender Committee by one of the staff members
in the Finance Directorate is nothing but an after
thought which has been advanced to cover up the
release of additional foreign exchange. This is
also evident from the fact that the necessary
amendment in this contract to justify release of
foreign exchange to the tune of Rs. 55.28 lakhs
was made only in December 1986 whereas the
foreign exchange was released as early as 1984.

