

**PUBLIC ACCOUNTS COMMITTEE
(1972-73)**

(FIFTH LOK SABHA)

NINETY-FIRST REPORT

**[Report of the Comptroller and Auditor General of
India for the year 1970-71, Union Government—Civil—
relating to the Department of Supply.]**



**LOK SABHA SECRETARIAT
NEW DELHI**

April, 1973/Vaisakha, 1895 (SAKA)

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(1972-73)

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Shri Avtar Singh Rikhy—*Joint Secretary*

Shri T. R. Krishnamachari—*Under Secretary.*

INTRODUCTION

1. The Chairman of the Public Accounts Committee as authorised by the Committee do present on their behalf this Ninety-First Report of the Committee (Fifth Lok Sabha) on the Report of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil) relating to the Department of Supply.

2. The Report of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil) was laid on the Table on the 7th April, 1972. The Committee examined the paragraphs relating to the Department of Supply on the 2nd and 3rd November, 1972.

3. The Committee considered and finalised this Report at their sitting held on the 24th April, 1973. Minutes of the sittings of the Committee form Part II* of the Report.

4. A statement showing the summary of the main conclusions| recommendations of the Committee is appended to the Report (Appendix IV). For facility of reference these have been printed in thick type in the body of the Report.

5. The Committee place on record their appreciation of the assistance rendered to them in the examination of the paragraphs by the Comptroller and Auditor General of India.

6. The Committee would also like to express their thanks to the officers of the Department of Supply and the Ministry of Defence for the cooperation extended by them in giving information to the Committee.

NEW DELHI;

April 24, 1973.

Vaisakha 4, 1895 (S).

ERA SEZHIYAN,

Chairman,

Public Accounts Committee.

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

DEPARTMENT OF SUPPLY

(DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS)

Procurement of vests woollen white

Audit Paragraph

1.1. Vests woollen white are in regular demand of Defence Services. In spite of its constant demand, its procurement is not being arranged on any programmed basis. No vocab-cum-programme book for this store showing the due date for receipt of indents from various indentors of the Defence Services is maintained by the Directorate.

1.2. In order to meet the Civil and Defence requirements of this store, the Director General, Supplies and Disposals, at present concludes rate contracts in the tender enquiries for which the estimated drawals during a year are stated.

1.3. The estimated drawals are the average of the annual value of the drawals through rate contracts in the previous two years and do not include other purchases through acceptances of tender. When indents are received subsequently from Defence, the requirements are found to be substantially in excess of the estimated drawals referred to above. In view of the monetary limit of estimated drawals, only a small number out of the requirements can be covered against the rate contract and the balance quantity has to be procured by placement of acceptances of tender.

1.4. (ii) The table below shows the number of woollen vests indented by Defence Services during 1969-70 and 1970-71 and ordered through rate contracts and acceptances of tender:—

1969-70	Date of indent	Number	ordered	1970-71	Date of indent	Number ordered
Number indented		Rate contract	Acceptance of tender	Number indented		Rate contract
						Acceptance of tender
191,000	22nd August 1969	11,787	1,79,213	4,45,300	19th June 1970	95,000
				1,16,320	13th June 1970	1,16,320

1.5. The rate contracts for the two years 1969-70 and 1970-71 showed the estimated drawals as Rs. 8 lakhs and Rs. 10 lakhs respectively, which were much lower as compared to the total value of demands (Rs. 17.40 lakhs in 1969-70 and Rs. 52.15 lakhs in 1970-71) placed through indents. Due to the low monetary limit of estimated drawals only 11,787 out of 1,81,000 vests indented could be procured against the rate contract for 1969-70 and the remaining

1,79,213 vests were covered through acceptances of tender on four firms at the rate of Rs. 5.83 and Rs. 6.14 each for size 1 and of Rs. 5.97 each for size 2 subject to assistance for procurement of wool tops on replenishment basis, as against the rate contract rates of Rs. 8.41 each for size 1 and Rs. 8.71 each for size 2 without assistance for the year 1969-70.

1.6. (iii). Revised specifications for woollen vests were introduced by the Indian Standards Institution in 1965. The new specifications revised, amongst others, the sizes, fabric composition etc. The rate contracts being executed by the Director General, Supplies and Disposals, have adopted the revisions in the specifications save that in sizes—the variations in measurements, it is stated, are minor and are mostly covered by tolerance provided in the revised specifications.

1.7. The indent for 1970-71 placed on the Director General, Supplies and Disposals, on 19th June, 1970 was for procurement of 4,45,300 vests (estimated cost Rs. 40.52 lakhs) of the revised specifications of 1965. This was covered by the Director General, Supplies and Disposals, in the manner indicated below:—

- (a) As, because of urgency of need, the indenter agreed to accept supply of 95,000 nos. according to old specification, this number was covered against the rate contract for 1970-71.
- (b) As supply of 1,11,325 vests was required by the indenter on emergency basis by October/November, 1971 the Director General, Supplies and Disposals, covered this quantity by issue of acceptances of tender on four firms on 4th November, 1970 on the basis of a short dated limited tender enquiry issued on 26th September, 1970, for supply conforming to the revised specification mentioned above, on without assistance basis at rates ranging from Rs. 9.14 to Rs. 10.89.
- (c) Without inviting fresh tenders, the balance 2,38,975 nos. conforming to revised specifications was also purchased at the same rate obtained against short dated limited tender enquiry referred to at (b) above, as it was considered by the Director General, Supplies and Disposals, that he was not likely to get better prices for supply without assistance basis.

1.8. (iv) The 1,16,320 vests shown in the table..... indented by Air Headquarters on 13th June, 1970 were of the revised specifications. The indenter, however, subsequently agreed to accept vests of the old specifications. Accordingly order for supply of this

entire quantity was placed on 25th September, 1970. While placing the supply order against the rate contract for 1970-71, the Director General, Supplies and Disposals, provided, in accordance with the indenter's request, for neck labels to be embroidered as per the revised specifications, though the rate contract against which the order was placed was for the old specifications according to which the neck labels were to be printed. Consequently, supply has not materialised so far (December, 1971).

1.9. (v) The rate contracts do not provide for assistance by Government in obtaining imported wool tops for the vests, and hence those prices are substantially higher than those for vests where this assistance is provided. Depending on the shortage, Government issues from time to time *ad hoc* licences for import of wool tops. The imports are canalised through the State Trading Corporation which imported wool tops worth Rs. 22 lakhs and Rs. 74 lakhs in 1970-71 and 1971-72 (upto December 1971) respectively. Estimated drawals shown in the tender enquiries for the rate contracts for 1971-72, wherein the specifications are those as in the rate contracts for 1969-70 and 1970-71, are Rs. 18 lakhs.

[Paragraph 38 of the Report of C & A.G. (Civil) for the year 1970-71]

1.10. the Committee enquired about the practice followed in various Government Departments in connection with the maintenance of vocab-cum-programme book showing the due date for receipt of indents from various indentors. The Secretary, Ministry of Supply explained: "Railways and Posts and Telegraphs have these vocab-cum-programme books. For Defence, they have not so far compiled any vocab-cum-programme book, although we took up this matter with them quite some time ago. This matter was discussed on the 5th May, 1970 in a meeting of the Co-ordination Committee which was held in the Ministry of Defence and there a decision was taken that they would compile such a book and send it to us as early as possible. Subsequently we pursued this matter with the Ministry of Defence; we sent several reminders. After that there was another meeting which was held on 14th April, 1972 under the chairmanship of Mr. Anandakrishna, Joint Secretary, where it was agreed that the Defence wing would take up compilation of such a vocab-cum-programme book for certain selected items of clothing. But it was rather surprising that later on we were informed that the MGO had considered this matter and they had come to the conclusion that no useful purpose would be served by preparing a vocab-cum-programme book mainly because the number of items to be dealt with ran into about a million and

it would be a stupendous task. We got a letter from the Ministry of Defence to say that this was the view and that the Ministry of Defence had agreed with that view of MGO. However, only recently, we had a meeting in my room, about 15 days ago, when this matter was considered further and we pointed out that, at least in the case of certain selected items where it was possible for them to make a forecast of the requirement, it would be a good thing if such a forecast could be sent to us so that we could plan production of those items and arrange for delivery at economical prices. I am glad to say that now the Ministry of Defence and the MGO have agreed to our point of view and they have informed us only yesterday in writing that they are going ahead with the preparation of such a book in respect of certain selected items."

1.11. A representative of the Ministry of Defence stated: "I do not have much to add to what the Secretary, Department of Supply, has said except to say that, initially, after considering all the aspects of the question, the Ministry of Defence felt that, apart from not serving a useful purpose, the volume of work involved may not really subserve the real purpose in view because, as distinct from other indentors, so far as the Defence Ministry is concerned, we have over a million items to contend with; the vocab-cum-programme book, if compiled for all these, would be very very voluminous; again a number of these items are not live in the sense that they do not come up for procurement every year; the specifications also keep changing from time to time which would mean that since the vocab-cum-programme book would contain the specifications and drawings also, this book would have to be changed quite frequently which would lead to a lot of infructuous work. Having regard to these, we took a view that it would not be worthwhile preparing a vocab-cum-programme book. But, subsequently, as Secretary, Department of Supply, explained, we had a discussion when we felt that, though not for all the items, at least for those items which are procured regularly and where the quantity procured would be sizeable, it would be worthwhile and useful to prepare a vocab-cum-programme book and we have accepted and started the work on it."

1.12. In reply to a question the witness informed the Committee that no work study was undertaken in the Ministry of Defence to ascertain the utility of a vocab-cum-programme book but only on the basis of a broad examination, it was considered that it would not be useful to maintain such a book.

1.13. The note (Appendix I) furnished by the Ministry of Supply at the instance of the Committee gives details of the action taken by the Ministries of Supply and Defence in regard to the proposal regarding maintenance of vocab-cum-programme book by the Ministry of Defence.

1.14. The Committee enquired whether the maintenance of vocab-cum-programme book was desirable from the financial point of view. The Financial Adviser in the Ministry of Finance stated: "This is an organisational aspect which is aimed at better purchasing methods and lower prices and so on. All the same I would say this is a step in the right direction."

1.15. The Committee desired to know the procedure followed by the Ministry of Defence in regard to their purchases in the absence of vocab-cum-programme book. A representative of the Ministry of Defence stated: "We start provision review every year on the figures based on 1st October, Programme is given to finish the major items upto 31st January. Then the liabilities of the major equipment and repairs to be done are communicated to the depots who do the provision with regard to components and that is done and finished by about July and we are then ready for the next year again. In this process we know vocab sections which are to be taken up for review and that information is passed on to the other branches who are to give us drawings and specifications, which also undergo changes. Then the demands which are formulated are checked up by various finance representatives depending on value. When indent is complete along with drawings, specifications and financial sanction it is sent to D.G.S&D.

Since total inventory is very large, we give priority to the items which are taken very often than those which are not demanded every year. We inform D.G.S. & D what are the recurring requirements, from year to which will not go down so that DGS&D can have the running contract instead of rate contract."

1.16. In reply to a question, the witness added: "The items of clothing, tools and hardware are the recurring demand. The demand for tyres, batteries and such other items is also heavy."

1.17. The Committee were informed that the Ministry of Defence intimated their requirements 21 months ahead to the DGS&D. Asked why it has not been possible to enter into running contracts for such items, the Ministry of Supply have in a note stated that during the period from 1968 to 1972 in respect of Hosiery items

viz., Socks, Woollen Jerseys, Underpants and Putties in only one case a lead of 21 months was allowed to D.G.S. & D. In other cases the lead time varies from a few days to 16 months.

1.18. During evidence, the Secretary, Ministry of Supply deposed: "If they can make a forecast of their requirements for two or three years, in that case I would like to enter into running contract instead of rate contract. So far as the rate contracts are concerned they are not contracts at all. The contractor can always back out and not make supplies. Secondly, we can entrust this to some mills in the case of clothing and make arrangement for phased deliveries to be made at more economical price.

These are the important reasons why we feel that it is important to have such a book."

1.19. Referring to the procurement of vests woollen white, the witness stated: "In 1966, we planned to enter into a rate contract for the first time for this item (covering period 1967-68). This was of the value of three lakhs of rupees. . . . This was *ad hoc*. For the first time, we had entered into rate contract. Subsequently, next year and the year after, we did take into account the drawals against the previous rate contract. When we entered into a rate contract for the next year, we found that as against a provision of three lakhs of rupees made in the earlier contract actually the off take was for Rs. 2.65 lakhs. For the next period 1968-69, when the rate contract was being considered, an *ad hoc* indent from DOS for 88,000 numbers was received. This was taken note of. 'On the file in the planning note, it has been recorded that because of this *ad hoc* indent, the value should be increased from 3 to 8 lakhs. This was done. It was in 1968-69.

Next rate contract was for 1969-70. The drawals against the previous rate contract we were taking into consideration and also to some extent the *ad hoc* indents which had been received from the DOS. We do not strictly go by it when the basis was quite different. In the case of the rate contract, we do not provide any assistance, but in the case of *ad hoc* indents, most of them are covered on the basis of assistance to be provided. Therefore, there was no proper basis for comparison and we did not strictly go by the *ad hoc* indents which had been received in the meantime. Last year, although the provision was for 18 lakhs of rupees, the drawals so far have exceeded Rs. 60 lakhs."

1.20. Explaining the difference between a rate contract and a running contract, the Secretary, Ministry of Supply stated: "For rate contracts we do not provide any assistance for the reason that we are not in a position to make a forecast of the actual drawings against a rate contract therefore it is a risky thing. If we release foreign exchange, it is difficult for us to make the necessary adjustments later on. So as a matter of policy we have decided that we shall not place contracts on the basis of providing assistance of any kind."

In the case of running contracts, where there is a definite pattern, we can enter into running contracts by providing assistance for which we definitely got a much lower price."

1.21. To a question whether in the case of rate contracts DGS&D was forced to pay more than in a running contract, the witness stated: "The only difference would be that we are not in a position to give them assistance and naturally the price will be much higher if we do not. The foreign exchange is limited and we have to explore the possibility of getting foreign exchange for more items. Therefore it happens that when it is on the basis of not providing assistance, we have to pay a higher rate and when we are in a position to release foreign exchange, certainly the rates are lower."

1.22. In reply to a question, the witness further clarified: "The position is like this that while it is true that if we enter into a rate contract, we necessarily have to pay a higher price because of the fact that it is not possible for us to give them any assistance; but the important point is this: whether it will be possible for us to provide assistance is the shape of wool tops for which again it would be necessary to release foreign exchange."

1.23. The Committee enquired whether it was not possible to supply wool tops to the manufacturers for getting reduction in prices. The Secretary, Ministry of Supply stated: "This matter has been considered, not once but I think on many occasions. As a matter of fact, I think in 1967 this was discussed here in the Public Accounts Committee because the main question was whether it was possible for the Government of India to provide foreign exchange for the import of raw material and to what extent. Now, the position is like this that so far as import of wool tops is concerned and provision of foreign exchange is concerned, the Ministry of Finance (Department of Economic Affairs) made it clear that it would not be possible for them to give foreign exchange to cover the entire requirement of Defence. And what they decided was that they would

make a provision of foreign exchange for woollen requirements as a whole."

1.24. The witness further explained: "The availability of foreign exchange is limited, they have also to look after the private sector for commercial quota which is given to the manufacturers for sale to the public. A certain amount of foreign exchange is earmarked for DGS&D to meet Defence requirement. The requirement was so large that only a limited amount of foreign exchange was available. . . We took up the matter with the Department of Economic Affairs. They stated: "The matter has been considered carefully in this Department. As already stated it would not be possible to provide foreign exchange to the DGS&D by withdrawing the requisite quantum of foreign exchange from the commercial quota. In view of the continuing pressure on foreign exchange, the commercial quota is also none too large and is hardly sufficient to cover the requirements of non-priority units in the private sector. It may be stated that licensing to such units is done on the basis, *inter alia*, of foreign exchange availability, past imports and past consumption of the items in question by the applicant unit. Besides, as already pointed out by E.A. (Industry), the withdrawal of the requisite amount of foreign exchange from the commercial quota would result in the loading of prices for the public at large."

1.25. Luring evidence the Committee were informed that the Ministry of Foreign Trade was importing wool worth Rs. 12 crores. This ceiling had been further increased to Rs. 15 crores and out of this Rs. 1 crore had been allocated for the Defence requirements. However, Defence requirements were estimated to be of the order of Rs. 2½ crores annually.

1.26. The Committee asked whether it was not possible to allocate Rs. 2½ crores worth of foreign exchange for the defence requirements. A representative of the Ministry of Foreign Trade stated: "The woollen industry is already working under-capacity. They are working only at 40 per cent of their capacity and if there is more curtailment in the foreign exchange position, it will not be possible."

1.27. On being asked whether it was not possible to set apart certain proportion of the production of wool tops produced by the woollen industry for defence requirements, the witness stated: "DGS&D has been making direct purchases. This problem has not been posed to us. We do not know about it."

1.28 The Secretary, Ministry of Supply stated: "We have been having discussions with the Foreign Trade Ministry with regard to the availability of wool tops. We have taken up with them and they have expressed their inability to help us. Many meetings have been held wherein the representatives of the Foreign Trade Ministry were present."

1.29. The statement below furnished by the Ministry of Foreign Trade gives details of the total allocation of foreign exchange for import of raw-wool, wool tops etc. and the amount allotted for defence requirements:

Year (Wool year Oct. to Sept.)	Amount of foreign exchange allotted for import of raw wool including wool tops, woollen rags etc.		
	Total allocation (Rs. in lakhs)	Allocated for Defence require- ments (Rs. in lakhs)	Percentage of Defence alloca- tion to total allocation
1969-70	1239	16	1.2%
1970-71	1500	75	5.0%
1971-72	1835	100	5.4%

1.30. Vocab-cum-programme books which enable the indenting Ministries to make a definite forecast of their requirements of various stores for two or three years are being maintained by the Ministries like Railways and Posts and Telegraphs. The maintenance of such books also enables the DGS&D to plan procurement of vital stores on a more rational basis by entering into running contracts with the suppliers instead of the rate contracts which are more expensive. The Committee regret to observe that the Ministry of Defence have not been maintaining vocab-cum-programme books with the result that the procurement of even the vital stores which are in regular demand of Defence Services was not being arranged on any programmed basis. The Committee were given to understand that in respect of certain items such as clothing, tools and hardwares the Ministry of Defence intimated their requirements to DGS&D. 21 months in advance. From the information made available by the DGS&D it is seen that during the period 1968 to 1972 in respect of hosiery items viz., socks, woollen jerseys etc. in only one case a lead of 21 months was allowed to DGS&D. In other cases the lead time varied from a few days to 16 months. This only underscores the need for better planning for the purchase of defence stores.

1.31. The Committee were informed that a decision had been taken as far back as in May, 1970 by the Ministry of Defence to examine the feasibility of preparation of vocab-cum-programme books. It took the DGS&D more than two years to persuade the Ministry of Defence to be convinced about the need for the preparation and maintenance of such books. The Ministry of Defence have now agreed to prepare vocab-cum-programme book in respect of some selected items. The Committee need hardly emphasise that the proposals aiming at better planning and economy should be examined expeditiously.

1.32. The Audit paragraph brings out the fact clearly that as the procurement of vests woollen white for Defence Services is not being programmed on a systematic basis, only a small number out of the total requirements is covered against the rate contracts entered into by DGS&D from time to time and the balance quantity has to be procured by placement of tenders. The procurement by acceptance of tenders involves assistance to the manufacturers for procurement of wool tops on replenishment basis. However, since the wool tops are to be imported with only limited foreign exchange allocated by the Ministry of Foreign Trade, acceptance of contracts on assistance basis becomes difficult. Therefore, in cases of urgent ad hoc indents from the Ministry of Defence, the DGS&D had to resort to purchases "at without assistance rates" which are inevitably high. The Committee desire that the Ministry of Defence should, in consultation with the DGS&D, make an exhaustive review of the whole system of the procurement of the vital stores and lay down procedures which are more conducive to economy.

1.33. The Committee note that against an estimated requirement of about Rs. 2.5 crores worth of foreign exchange for import of wool tops for defence requirements, foreign exchange of Rs. 1 crore only has been allocated. The Committee desire that the feasibility of setting aside a portion of the total production of wool tops in the country for meeting the urgent requirements of the defence forces may be examined.

Purchase of Ambassador Cars

Purchase of Ambassador Cars

1.34. The Director General, Supplies and Disposals, had entered into a rate contract with the manufacturer of Ambassador cars for supply of the vehicles to Government indentors, the period of that rate contract being upto March, 1971. The cars in the rate contract

were as per the manufacturer's standard specifications and the price payable was as ruling at the time of supply.

1.35. In November, 1970 the Director General, Supplies and Disposals, received an urgent indent from the Defence Services for 199 Ambassador cars, the specifications of which were to some extent amplified by the indenter. In December, 1970, the Director General, Supplies and Disposals, asked the manufacturer to indicate guaranteed delivery and also to offer quantity discount over the manufacturer's net dealer price (as accepted under the rate contract) as the number of cars required was large. The firm agreed to make available 80 cars for inspection 15 days after receipt of the acceptance of tender and 80 cars thereafter every 30 days until the supply was completed. The firm agreed to charge the Defence rates (which are somewhat lower than the rates for civilian indentors under the rate contract) as prevailing at the time of delivery. It did not agree to offer any quantity discount over its net dealer price on the ground that there had been substantial increase in the prices of raw materials and in labour charges.

1.36. An advance acceptance of tender was placed on the manufacturer on 6th February, 1971; the delivery period provided therein was as follows:

- | | | | | |
|---------------------------|---|---|---|---------|
| 1. By 25th February, 1971 | . | . | . | 80 cars |
| 2. By 25th March, 1971 | . | . | . | 80 cars |
| 3. By 10th April, 1971 | . | . | . | 39 cars |

The advance acceptance of tender defined "delivery" as "tendered for inspection". The price variation clause in the formal acceptance of tender provided that the price of car ruling on the date of the original delivery period shown above and as accepted against rate contract would be applicable.

1.37. In its letter dated 19th February 1971, the firm advised the inspection authorities to send their inspectors for inspection of cars as under:

- | | | | | |
|---------------------------|---|---|---|---------|
| 1. On 23rd February, 1971 | . | . | . | 40 cars |
| 2. On 24th February 1971 | . | . | . | 40 cars |

The firm also stated that this covered the offer for inspection of 80 cars within 25th February, 1971 as per the terms of the contract. In its letter dated 24th March, 1971, the firm intimated that it had tendered further 80 cars for inspection; again in its letter dated 9th April, 1971 it intimated that it had tendered 39 more cars for inspection. The Defence Inspectorate, however, in its telegram dated 29th

March, 1971 informed the Director General, Supplies and Disposals, that the firm had tendered only 79 cars out of which only 20 cars were accepted. The indentor, however, in his letter dated 29th April, 1971 informed the Director General, Supplies and Disposals, that the firm had tendered cars for inspection as follows:

Upto 2-3-1971	. . . . .	39 cars	
On 22-3-1971	. . . . .	10 cars	
On 24-3-1971	. . . . .	9 cars	(1 new and 8 old)
On 25-3-1971	. . . . .	12 cars	
On 27-3-1971	. . . . .	16 cars	(14 old)
On 29-3-1971	. . . . .	10 cars	(7 old)
On 30-3-1971	. . . . .	45 cars	(28 old)
TOTAL	. . . . .	141 cars	(57 old)

Even according to this the firm had offered in all 141 cars for inspection. After inspection, only 44 cars had been accepted.

1.38. On 26th April, 1971, the firm intimated to the Director General, Supplies and Disposals, that the price of Ambassador cars had been revised under the Supreme Court Order dated 16th April, 1971 and that all the cars to be supplied after that date would be charged for at the revised higher prices. It also requested amendment of the acceptance of tender regarding price variation for payment of prices ruling on the date of delivery to consignee. On the firm refusing to supply the remaining 155 cars at the old price provided in the acceptance of tender, the advice of the Law Ministry was sought in the case. The point on which that Ministry's advice was sought was whether it would be in order to allow, through a fresh acceptance of tender, the higher price for the unsupplied number of cars, and thereafter, when those supplies were completed, the old acceptance of tender might be cancelled at the risk and expense of the firm for recovery of general damages as the stores were of proprietary nature. The Ministry of Law advised that the Director General, Supplies and Disposals, could not cancel the old acceptance of tender ignoring the right of the firm to have the prices revised and that, therefore, the question of cancelling the balance of 155 cars at the risk and expense of the firm after issuing a fresh order of 155 cars did not arise. Keeping in view the advice of the Ministry of Law and the urgency of the demand and since the cars were proprietary, the acceptance of tender was amended on 6th August, 1971, allowing the higher price (Rs. 17,872) with delivery period as

20th August, 1971 for inspection at the rate of 30 cars per day. Thereafter, the firm supplied the remaining 155 cars.

1.39. The acceptance of tender in question did not specify the date by which supply of all the 199 cars, after approval on inspection, would have to be completed by the firm. Also, the price variation clause which provided that the price of car would be that ruling on the date of original delivery period (when 'delivery' was defined as 'tendered for inspection') was not free from ambiguity.

1.40. The extra expenditure on account of purchase of 155 cars at the higher price was Rs. 2.95 lakhs. The increase in price was 10 per cent.

[Paragraph 39 of the Report of C&AG (Civil) for the year 1970-71]

1.41. The Committee desired to know how the term 'delivery' in the price variation clause of the contract with the car manufacturer had been defined as 'tendered for inspection' and whether this was the usual practice. The Secretary, Ministry of Supply, explained during evidence: "Normally, delivery is when the goods have been tendered for inspection, inspected and despatched. That is how we use the term. But in some cases as in the case of Hindustan Motors, where it was a proprietary item, the delivery is to be given at the factory itself, that is, in the firm's premises themselves and the firm said that there were delays in inspection sometimes and it took a long time for inspection to be done. Therefore, they insisted that in this particular case, delivery would mean that the cars were tendered for inspection. But the idea was that goods which were acceptable would be tendered for inspection and since the delivery was to be made at the firm's premises, in fact, it did not make much difference, because it was not to be despatched." He further clarified: "Actually, there was no delivery involved, because as I said, the inspection was being done in the firm's own premises. Once the cars were accepted, the delivery was complete. In this particular case, the delivery was ex-plant. So, there was no question of despatch and all the vehicles were to be accepted at the plant itself. That means that as soon as the inspection was done and the cars were accepted delivery was complete."

1.42. In reply to a question the witness stated that cars rejected on inspection were not to be deemed to have been delivered within the meaning of the term 'delivery' provided for in the contract. Asked why an unusual clause defining the word 'delivery' as 'tendered for inspection' had been included in this particular contract,

the Secretary, Ministry of Supply, stated: "In the case of proprietary items, the position is somewhat different. But where there is competition, of course, the firm is always agreeable to agree to a guaranteed delivery. But in this particular case, the firm insisted that the delivery should be when the goods were tendered for inspection, because they said that it took a long time for the cars to be inspected. There was no other way and we had to accept the position."

1.43. The Committee enquired why no specific date of completion of delivery of 199 cars by the firm was specified. A representative of the DGS&D stated: "When the firm was asked to submit the offer for these 199 cars, in their offer they said that delivery would mean tendered for inspection. Then discussions were held with them. We tried to persuade them to give us a guaranteed delivery date. There is a letter of 16 Dec. 1970 addressed to the firm in one paragraph of which it is said 'Please also intimate the guaranteed delivery period for supplies of the above quantity and also offer the quantity discount over the net dealers price as the quantity required is 199 numbers'. There were discussions held to get a guaranteed delivery date from them. But they insisted that we must provide this definition of delivery, that is, 'tendered for inspection'. We had no other go but to agree."

1.44. Asked whether DGS&D were satisfied with the definition of the term 'delivery' insisted upon by the firm, the witness replied: "No. These are proprietary stores and were required urgently. So we had no other go but to specify that."

1.45. To a question whether because of the monopoly enjoyed by the firm, the DGS&D were forced to accept unusual terms, the Secretary, Ministry of Supply, replied: "There is no doubt in it. In the case of proprietary items, where there is no other source of supply, we have necessarily to depend upon one particular firm. It is unfortunate. That is why in the case of other items, common user items we tried to develop some more sources of supply, even by paying slightly higher price so that later on we can be competitive rates. When there is no competition, there is no other way and that is unfortunate."

1.46. The Committee pointed out that the Audit had expressed the opinion that the definition of the term 'delivery' as included in the contract was not free from ambiguity. On being asked about the legal opinion, a representative of the Ministry of Law deposed: "So far as the clause is concerned, I would say that there is no ambiguity in the clause because it very clearly says that if it is tendered

for inspection, then it would be deemed to have been delivered." The witness added: "It is presumed, when stores are put up for inspection, they will be of acceptable quality in terms of the contract."

1.47. In reply to a question, the representative of the Ministry of Law stated: "Generally, this is not the clause which is incorporated in the DGS&D contract. As the Secretary, Supply Ministry, pointed out, this being a proprietary item, they had not the bargaining position. So, as I understand, they had not the advantage of forcing the contractor to change the delivery stipulation. They had to agree to this to being about a concluded contract."

1.48. The Committee enquired whether the definition of the term 'delivery' as 'tendered for inspection' was repeated when the acceptance of tender of the firm was amended on the 6th August, 1971, after allowing a higher price to the firm after the 16th April, 1971. The DGS&D have informed: "In the amendment issued on 6-8-1971, the delivery period was stipulated as under:

'155 Nos. of acceptable cars should be offered for inspection by 20-8-1971 @ 30 Nos. cars per day (Delivery means acceptable cars tendered for inspection)'."

1.49. The Committee were informed that unless the Defence of India Rules were in operation, the Government had no powers to requisition passenger cars. As regards the regulation of distribution of cars, a representative of the Ministry of Industrial Development stated: "Under the Car Distribution and Control Order, Government do have powers to reserve special quota for particularised uses. In pursuance of that there is a Central Government quota which is used for allocation of cars to Government servants and also to hon. Members of Parliament. So far as Defence Services are concerned, there is a certain allocation to them from out of this quota for allocation among the Defence personnel in their personal capacities. So far as purchase as such for departmental use is concerned, there is at the moment no special quota. When the vehicles are purchased by the DGS&D, the contract is entered into between the supplying company and the DGS&D and the Industrial Development Ministry does not get involved in this exercise at all."

1.50. The Committee drew attention to the discrepancies pointed out in the Audit paragraph in the figures regarding the number of cars tendered for inspection by the firm. In this connection a representative of the Department of Defence Production stated: "I would like to explain his point. What happened was that the firm

counted even those cars which were re-tendered. They counted the same car twice and sometimes thrice. That is how the inflated figure has been given." The witness further added: "There was a bit of confusion about the challans. We used to maintain a book for accepted cars. The same car is not accepted more than once. For giving the figures, how many were tendered, at times, we might have taken from the challans straightway. When we examined against duplication, we found that 56 cars were duplicated. The figure 141 is not correct. The actual figure comes to 143 out of which 56 were repetitions."

1.51. The statement below furnished by the Ministry of Defence gives details regarding progress of inspection of the cars upto 10th April, 1971, i.e. upto the end of the delivery period specified in the advance acceptance of the tender:

Sl. No.	Date	No. of cars offered for inspection as per firms letter	No of cars subjected to earlier inspection	No. of cars inspected	No. of cars accepted and inspection notes released
1.	26-2-71	10	nil	nil	nil
2.	27-2-71	10	nil	nil	nil
3.	1-3-71	10	nil	2	nil
4.	3-3-71	10	nil	1	nil
5.	9-3-71	nil	nil	3	nil
6.	4-3-71	nil	nil	2	nil
7.	5-3-71	nil	nil	2	nil
8.	6-3-71	nil	nil	2	nil
9.	17-3-71	nil	nil	4	nil
10.	19-3-71	nil	nil	3	nil
11.	20-3-71	nil	nil	4	nil
12.	22-3-71	10	1	6	nil
13.	24-3-71	1	8	26	nil
14.	25-3-71	12	nil	10	9
15.	26-3-71	nil	nil	12	nil
16.	27-3-71	2	14	nil	16
17.	29-3-71	3	7	3	10
18.	30-3-71	19	26	nil	9
		87	56	80	44

No of cars not accepted 80—44—36.

1.52. In this connection the Ministry of Defence have stated: "Total number of cars physically tendered by the firm were 80 only. There were no cars tendered for inspection in the month of April, 1971. Figure of 80 cars physically tendered by the firm and also actually inspected is confirmed by the firm's challan of 30 March, 1971. 36 cars were not re-tendered by the firm after rectification of defects pointed out by Inspector. Seven cars [the difference between column (c) and (e)] were shown on the challans but not physically tendered for inspection."

1.53. The following note dated 6-7-71 recorded on the DGS&D file gives details of the execution of the contract by the firm as also the action taken by DGS&D from time to time:

"This case deals with the contract for 199 Nos. of Ambassador Cars placed on M|s. Hindustan Motors against the demand from D.O.S.|Army Hqrs.

The delivery period of 199 Nos. was taken as date of tendering stores for inspection and shown as:

- (a) 80 Nos. by 25-2-71
- (b) 80 Nos. by 26-3-71
- (c) 39 Nos. by 10-4-71

It transpired that whereas the firm issued letters, as per copies available in the file, to the Inspectorate for inspecting the stores within the due dates, as mentioned therein, but actually by 30th March, 1971 they had tendered only the first lot of 80 Nos. Challans for the other lots were never received by the Inspector within the due dates. Out of the 80 Nos. tendered, 44 Nos. were accepted and 36 were rejected for rectification. Instead of rectifying, the firm disposed of those cars in the open market.

The prices of Ambassador cars were statutorily being controlled by the Deptt. of I.D.

The firm, M|s....., had gone to the Supreme Court about the increase in prices. Interim orders were issued by the Supreme Court on 16th April, 1971 allowing the increase in price. The firm wanted that this increase should be given for 155 Nos. which were not supplied by 16-4-1971.

The Indentor increased the quantity from 199 Nos. to 271 Nos. After showing the file to the Department of Supply, an amendment to the A|T was issued *vide* p. 154|c saying that the quantity may be read as '271' Nos. The delivery period for the additional 72 Nos.

would be 31st May, 1971. It was also added that for this quantity of 72 Nos. ordered prices ruling at the time of delivery and as approved by the Deptt. of I.D. would be payable. The intention was that the firm should stick to the old prices for 199 Nos. having not adhered to the delivery period, but for the next 72 Nos. which were covered after 16-4-71 they would be entitled to the increased prices.

Against 72 Nos. the firm supplied another 24 Nos. There is no further supply.

A meeting was arranged in the room of D.G. when the representative of the firm was called on 5-6-71. The representative was impressed:

- (a) to supply 155 Nos. at the old rates, and
- (b) to accelerate the rate of supply.

During this meeting, the complete position of the case was shown to the firm that they had failed to tender the stores for inspection.

The firm had agreed to tender the stores for inspection at the rate of 30 cars per day, but they did not agree to supply 155 Nos. at old rates. The firm promised to check up the matter with their office. I was informed on the telephone by Shri..... that the firm was not agreeable to supply at old rates and he also refused to send a letter, saying that this may be recorded in the file. The case was referred to the Ministry of Law to confirm if we could cancel 155 nos. at the risk and cost of the firm and thereafter place a fresh order and recover the difference as General Damages. The Law Ministry has not agreed to this suggestion and feels that the firm is entitled to the increase in price and no cancellation at the risk and cost of the firm is possible.

Since the stores are required urgently by the Indentor and in view of the Law Ministry's advice, we may increase the prices as now fixed by the Deptt. of I.D. and ask the firm to give in writing that they will tender 30 Nos. per day as agreed to by them on 5.6.71. Also to confirm before amendment is issued, if they agree to supply at old rates."

154. The Ministry of Law to whom the case had been referred for legal advice on certain aspects of the contract had recorded the following note:

"The position appears to be as follows. By the end of March,

1971, the firm had offered for inspection 80 Ambassador cars out of which 44 were accepted. The balance of 36 appears to have been diverted to civil consumers on the ground that the financial year was drawing to a close. The challan in respect of the second lot of 80 cars was received on 7.4.71 and ultimately these cars were not offered for inspection for the same reason, namely, the closing of the financial year. Coming to the third lot of 39 cars, they do not appear to have been offered for inspection at all. No cars seem to have been offered for inspection on 5-6-1971. The referring note also is silent on this point. The firm, therefore, clearly failed to perform the contract and deliver the vehicles within the stipulated dates of delivery ending with 10-4-1971. The Purchaser, however, acquiesced in the continuance of the contract by issuing a letter of extension unilaterally extending the date of delivery till 31-5-1971. This A|L was of course not accepted by the firm. In the meantime, this is to say, on 16-4-1971 the Supreme Court revised the prices by its orders of even date. It is conceded that the price ruling on the date of supply will apply the same formula being applicable to the R|C referred to in the price clause (clause 10) of the A|T. The contractor hinted at the impending revision in his letter dated 9-4-1971 and the revised price actually came into force on 16-4-1971. The contractor is entitled to insist that the price be revised. It follows, therefore, that we cannot cancel the A|T ignoring the right of the firm to have the prices revised. It is open to the DGS&D to issue a fresh order in respect of the balance of 155 Nos. with the revised price incorporated therein. The question of cancelling the balance of 155 Nos. at the risk and expense of the firm after issuing a fresh order for 155 Nos., therefore, does not arise. The questions raised...are accordingly answered."

1.55. According to the advance acceptance of tender placed on the manufacturer on 6th February, 1971, 199 Ambassador cars were to be tendered for inspection by 10th April, 1971 to meet the defence requirements. However, only 80 cars were tendered for inspection by the manufacturer out of which 44 cars were accepted. The extra expenditure on account of purchase of the balance of 155 cars at the higher price consequent on the Supreme Court order dated 16th April, 1971 was Rs. 2.95 lakhs. As the firm clearly failed to perform the contract and deliver the vehicles within the stipulated dates of delivery ending with 10.4.1971, action should have been taken to recover general damages. Instead the purchaser is stated to have acquiesced in the continuance of the contract by issuing a letter of extension unilaterally extending the date of delivery till 31st May, 1971. The Committee desire that responsibility should be fixed for this lapse.

1.56. The Committee find that although the number of cars offered for inspection as per the firm's letter was 87, only 80 cars were

actually tendered for inspection. Further, 36 cars rejected on inspection were not retendered by the firm after rectification of defects pointed out by the Inspector. They were disposed of in the open market. The Committee would like to know whether the failure of the firm in this regard was examined.

1.57. The Committee are not happy over the high rate of rejections (45 per cent). As the firm was presumably aware of the impending revision of the price of car, deliberate manipulation by them to keep the number of accepted cars to the minimum cannot be ruled out. It is unfortunate that there was no commitment on the part of the firm to deliver all the cars by the stipulated date in good condition. The lacuna in the contract was that the term 'delivery' was defined as 'tendered for inspection'. The assumption that "when stores are put up for inspection they will be of acceptable quality in terms of the contract" did not prove to be correct. The Committee do not appreciate the helplessness of the Government in persuading the firm to accept a firm delivery clause. The Committee suggest that Government should examine this question in all its aspects to see how their interests could be safeguarded although Ambassador car is a proprietary item.

1.58. Under the Car Distribution and Control Order, Government have powers to reserve a quota for specified uses. In pursuance of this there is a Central Government quota which is used for allocation of cars to Government servants. But so far as purchase for departmental use is concerned, there is at the moment no special quota. In view of what has happened in this case, the Committee desire Government to examine the feasibility of having a special quota for departmental use.

Purchase of Trailers for Defence Department

Audit paragraph

1.59. On receipt in April, 1968 of an indent for trailers (to be supplied by March, 1969) from Army Headquarters, the Director General, Supplies and Disposals, invited tenders in July, 1968. Owing, however, to changes in specifications made by the indenter, the tenders received were cancelled and tenders invited, subsequently, in December, 1968. After considering these tenders, orders were placed by the Director General, Supplies and Disposals, in March, 1969|May, 1969 as follows:

Firm	No. of trailers	Price
		Rs.
A	20	4,500
B	140	4,450
C	20 (trial order)	4,485
D (of Madras)	865	4,577

160. The the trailers were to be with electrical fittings. Firm C defaulted in supplying the trailers. Firm D was registered with the Director General, Supplies and Disposals, who placed this order on that firm in an effort to develop new sources of of supply. The value of the contract (dated 31st March, 1969) placed on that firm was Rs. 39.59 lakhs. In accordance with one of the conditions of that contract read with subsequent amendment thereto, the firm was required to put up an acceptable prototype strictly in accordance with the specifications and drawing for approval of the inspecting officer (inspection was to be be done by the Defence Inspectorate) by 23rd August, 1969 (this was in accordance with the firm's own request).

1.61. On 21st August, 1969 the firm offered a prototype to the Inspectorate of Vehicles, Madras and on 23rd August, 1969 it, of its own accord, offered a second alternative prototype. After checking the dimensional correctness of various assemblies and necessary road trials, only on 7th November, 1969 the Defence Inspectorate intimat-ed to the firm certain defects and asked it to rectify them and reoffer the prototype trailer for inspection.

1.62. There was a lay-off in the firm's factory from 19th Decem-ber, 1969. On 25th June, 1970, the Director General, Supplies and Disposals, was informed by the Assistant Director of Supplies, Madras, that the lay-off in the firm's factory still continued. The Director General, Supplies and Disposals, was also informed that the firm had run into acute financial difficulties. The firm did not reoffer for inspection the prototype trailer.

1.63. In the meanwhile, in January, 1970 the Director General, Supplies and Disposals, was informed that decision had been taken by the indentor that the trailers would be provided with lighting system different from that in the contract and he was requested to switch over to the change with suitable price reduction on consul-tation with the firm.

1.64. In February, 1970 the Defence authorities who were in urgent need of the trailers asked the Director General, Supplies and Disposals, to examine the question, in the event of the failure of the firm to fulfil its commitment within a reasonable time, of place-ment of contract on some other reliable firm which had established capacity. On 16th March, 1970, which was more than six months after the date of breach (23rd August, 1969) of the contract, the Direc-tor General, Supplies and Disposals, sought the advice of the Law

Ministry on whether the contract with the firm might be cancelled at the risk and expense of the firm. The Law Ministry advised that, while the date of breach was 23rd August, 1969, the acceptance of tender could not be cancelled straightaway without a notice to the firm to perform within a reasonable time. Accordingly, a notice was served in May, 1970 on the firm to offer an acceptable prototype at the latest by 20th June, 1970 and the firm was informed that in the event of its failure to put up an acceptable prototype by that date the contract would be cancelled. Due to the firm's failure to submit for inspection an acceptable prototype, the Director General, Supplies and Disposals, cancelled on 10th July, 1970 the contract at the risk and expense of the firm.

1.65. Contracts for repurchasing the trailers from other firms were executed in December, 1970 and January, 1971. The repurchases were at higher prices, the extra expenditure thereon being Rs. 6.32 lakhs. The extra expenditure could not be recovered from firm D because;

- (1) the repurchases were made after expiry of six months from the date of breach of the contract; and
- (2) most of the trailers repurchased were without electrical fittings.

No trailer against the repurchase contracts has been received so far (December, 1971).

[Paragraph 40 of the Report of C&AG (Civil) for the year 1970-71].

1.66. The Committee enquired how many times were the specifications for trailers changed by the indentor and why were these changes necessary. The Ministry of Defence have in a note stated:

"The changes in specifications|drawings were intimated to DGS&D in three instalments after placement of the indent. These were, however, in addition to the change notified in the drawings|specifications by CIV while forwarding the vetted copy of the indent itself on 10th April, 1968. The dates on which the changes were intimated by CIV after placement of the indent on DGS&D were on 17th May, 1968, 18th December, 1968 and 8th January, 1969. The dates of changes as intimated by the Department of Supply... do differ from the above dates. The specifications and drawings for equipment are not kept stagnant but are continuously improved upon the basis of past experience and reports received from users. Nevertheless, when indents are floated,

drawings and specifications as they are at that time are supplied to DGS&D for procurement and finalisation of the order. In this particular case the finalisation of the indent took a very long time.

The indent was sent on 31st March, 1968 and the quotations were to be opened on 5th July, 1968. The first amendment was issued by CIV on 17th May, 1968, i.e., one and a half month earlier than opening of tenders. The amendments were warranted due to improvement incorporated in the design of jockey wheel by welding 25 mm. diameter boss on each side. Layout for the lighting system was also included in the drawings for ease in manufacture and to ensure uniformity. In view of the design requirement it was considered desirable that the amendment be incorporated in the drawings and specifications. DGS&D informed these changes to the recipients of enquiry, but only 5 out of 17 firms quoted as per revised specifications. Even then the contract could have been finalised after carrying out negotiations with all the prospective suppliers. This procedure has been followed in a number of others tenders|contracts. Instead, earlier enquiries were cancelled by DGS&D and fresh ones floated. In the meantime, another fresh indent for 295 trailers was floated. The drawings and specifications for this new indent were naturally changed without interfering with the earlier indent. Between the period May 1968 to end of November 1968 no changes in specifications were made for the first indent for 1250 trailers. The second set of amendments in drawings and specifications were made applicable to the fresh indent *vide* CIV letter No. 0924|Cont 'V' dated 5th December, 1968. However, at this stage when it was known that orders against the first tender was still not finalised, DGS&D was advised on 18th December, 1968 to quote the latest drawings and specifications. Final specifications|drawings were intimated to DGS&D on 8th January, 1969 and A/T was placed on 31st March, 1969. The changes incorporated in the drawings and specifications by that time included incorporation of important design improvements such as stipulation of shot peening of road springs. This improves the fatigue life of springs. A policy decision was taken that **all road springs for vehicles would be shot peened.** At that time specification for painting was modified by the technical authority for basic paints. Specification

pertaining to the paints of the trailer was therefore amended so that the latest painting specification could be made use of. The changes also included incorporation of certain details as ply rating and tread patterns of the tyres. This was necessary for clarity."

1.67. It is seen that of the four firms on which orders were placed for supply of trailers, firm 'D' got the order for the largest number i.e. 865 trailers and the price quoted by the firm was the highest i.e. Rs. 4577 per trailer. It has been stated that the order on the firm 'D' had been placed in an effort to develop new sources of supply. Asked how far was it justified to place such a big order on this firm, the Department of Supply have in a note stated:

"Orders were placed with the firms depending upon their capacity. M|s..... were registered with the DGS&D for various structural items like cranes, etc. which are much more complicated items than the trailers in question. Their capacity had also been assessed for trailers upto 50 ton capacity. As far as financial standing is concerned, the firm had paid up capital of over Rs. 99 lakhs and they were executing the orders for structural items satisfactorily.... It may also be stated that in the report dated 7-11-69 the Inspector did not say that the pilot was rejected but he merely asked the firm to resubmit the pilot, after rectification. Unfortunately, the firm closed down immediately thereafter and they could not execute the order. In the compendium effective from 29-1-70, published by the Chief Inspectorate of Vehicles (now the Controller of Inspection, Vehicles, Ministry of Defence) M|s..... have been indicated as an approved source for the supply of trailers."

1.68. According to Audit paragraph the defects noticed in the prototypes submitted by the firm 'D' on 31st August, 1969 and 23rd August, 1969 were communicated to the firm only on 7th November, 1969. In this connection the Ministry of Defence have stated:

"Firm tendered prototype for inspection on 21-8-69 and on their own initiative tendered another prototype on 23-8-69. The second prototype incorporated certain improvements. Staff could not be detailed between 21st August to 27th August, 1969 for regular inspection at the factory premises due to,

- (a) Lay off in the factory itself.
- (b) Clearance from excise could not be obtained by the firm to take the trailer out for preliminary trials.

On 28-8-69 the prototype was checked for overall dimensions and between 3rd September—12th September, 1969 the trailer was stripped and dimensional checking of components was carried out. This was necessary to ensure interchangeability of components as also due to the fact that the firm at that time was not an approved source on our list. The firm was asked to carry out certain rectification and meet minor discrepancies.

On 20th September, 1969, the firm intimated that the trailer will be ready duly assembled and rectified on 26th September, 1969. On 26th September, 1969 the firm informed that the trailer was ready but not cleared by Excise Department. Hence the trailer could not be taken out for road trials.

Finally on 29th October, 1969, the firm tendered the prototype for trials after obtaining clearance from excise authorities. Trials were conducted and on completion, I of V (SZ) informed the firm to rectify the trailer and re-offer it for inspection. The trailer was never retendered for inspection.

It would be noted from the above that the total time taken for inspection of prototype was only 33 days, which is normal for a detailed trial of a prototype, whereas the firm took 47 days to rectify defects, get excise clearance and sort out their problems."

1.69. The Committee enquired why was no action taken to cancel the contract and arrange risk purchase within six months from the date of breach of contract i.e. 23-8-1969. In a note the Department of Supply have explained:

"In accordance with the contract, an acceptable pilot sample was to be submitted by 23-8-1969. The contract was to be cancelled only in case of non-submission of sample pilot or if the same was declared unacceptable. Therefore, the cancellation was possible only if the firm had not submitted the sample by 23-8-69 or if the sample was declared unacceptable, which was not the case. The Inspector reported to the firm on 7-11-69 that the trailer be rectified and re-offered for inspection, but the firm did not rectify the defects and re-offer the trailer for inspection, because they were closed down soon thereafter. According to the advice of the Ministry of Law, the Inspectors' letter dated 7-11-69 kept the contract alive. Therefore, the contract could not be cancelled within six months from the date of breach i.e. 23-8-1969."

1.70. It has been stated that in March, 1970 (after expiry of more than six months after the date of breach of contract, viz. 23-8-1969) the DGS&D sought the advice of the Ministry of Law whether the

contract with the firm might be cancelled at its risk and expense. The Committee asked whether it was not realised at that stage that the period of six months from the date of breach was already over. In this connection the Department of Supply have in a note stated: "Before cancellation of any contract, it was necessary according to the prescribed procedure to ascertain the legal position from the Ministry of Law, as to whether the purchaser was within his rights to cancel the contract. The Ministry of Law advised on 18th April, 1970 that the contract could not be cancelled and that a performance notice had to be issued. Had the firm responded and acknowledged the notice, it would have been possible for the purchaser to obtain the supplies or cancel the contract, establishing an advanced date of breach, which normally would be the extended delivery period indicated in the notice."

1.71. The notice was served on the firm in May, 1970 asking it to offer an acceptable prototype trailer by 20-6-1970. Asked whether this notice was received by the firm, the Department of Supply have stated: "The notice had not been acknowledged by the firm. In this connection it is stated that the firm had closed down from December, 1969 to January, 1971 when it was taken over by the Tamil Nadu Government."

1.72. The Audit Paragraph mentions that one of the reasons why the extra expenditure involved in the purchase of trailers could not be recovered from the firm 'D' was that most of the trailers repurchased were without electric fittings. The Committee enquired whether it was not known that no recovery from the firm would be possible if trailers of different specifications were purchased. The Department of Supply have in a note stated:

"Since a period of six months had elapsed from the date of breach, a valid risk purchase was not possible in this case. While making re-purchase, it was felt advisable to procure the store according to the revised specification, as desired by the Indenter, instead of sticking to the specification indicated in the A/T cancelled on M/s. Southern Structurals. Whether the stores were purchased to the same specification or revised specification would not have made any difference, since the risk purchase could not be completed within six months from the date of breach. In cases where risk purchase is not completed within six months from the date of breach of contract, the purchaser has to take recourse to general damages. In this case a claim for general damages to the extent of Rs 4.19 lakhs has been made on M/s.....and the Pay and Accounts

Officer has been requested to recover the amount from the pending bills of the firm."

1.73. The Committee desired to know whether the trailers for the purchase of which new contracts were executed had been received. The Department of Supply have intimated:

"The quantity ordered on M/s..... was 865 Nos. However, the Defence Department withdrew a quantity of 300 Nos. leaving a balance of 585 Nos. which were re-purchased as under:—

(a) M/s.....	<u>60 Nos.</u>
Supplied	Nil
Under Inspection D.P. valid upto 15-3-1973	10 (out of 140 of earlier order dated 31-3-69)
(b) M/s.....	<u>205 Nos.</u>
Supplied	Nil
Delivery period	15-10-72
Firm has requested for 6 months' extension in D.P. saying that many components are ready. The matter is under consideration in consultation with the indenter. .	
(c) M/s.....	<u>220 Nos.</u>
Supplied	Nil
Delivery period valid upto	31-12-1972
Firm claim that they have got all components ready and have started the supplies. So far nothing has been despatched.	
(d) M/s.....	<u>100 Nos.</u>
Supplied	Nil
Information has been received on 15-12-1972 that their sample has failed and, therefore, cancellation at their risk and cost is under consideration."	

1.74. The Committee are unhappy to note that after placement of the indent with DGS&D in April, 1968 the Defence Department changed the specification and drawings for the trailers thrice between May, 1968 and January, 1969. As a result the tenders invited in May, 1968 had to be cancelled. In the retenders invited in December, 1968, the specifications and drawings were also changed twice before the finalisation of the contract in March, 1969. The changes in the specifications not only contributed to the delay in the purchase of trailers but also resulted in avoidable loss as the extra expenditure incurred on risk purchase could not be recovered from the defaulting firm due to trailers repurchased being of different specifications. The Committee need hardly stress that indents should be placed with DGS&D only after the specifications of requisite stores have been finally decided upon. They trust that the present instance will not be allowed to be repeated.

1.75. The Committee also feel that the placement of a big order valued at Rs. 39.59 lakhs on a new firm which had no previous experience of manufacturing trailers was not at all justified. It is pertinent to note in this connection that the order on this firm was placed 'in an effort to develop new sources of supply'. In the opinion of the Committee the placement of an order of the magnitude of 865 trailers out of a total of 1045 was highly improper and calls for investigation.

1.76. It is seen that the inspection of the prototype submitted by the firm on the 23rd August, 1968 was completed by the Defence Inspectorate on 7-11-1969 and thereafter due to lay off in the firm's factory from 19-12-1969 the firm did not re-offer, for inspection the prototype trailer. In view of the closure of the factory, the DGS&D should have taken necessary steps to safeguard the interests by cancelling the contract well in time. The delay in taking timely action has resulted in extra expenditure of Rs. 6.32 lakhs which the Committee cannot but deplore.

Purchase of Antimony

Audit Paragraph

1.77. Antimony an essential raw material for Defence production, storage batteries and vital alloy metals, is produced solely by a single firm in the country. The fair selling price of the metal is fixed by the Department of Mines and Metals on the basis of periodical enquiry by Tariff Commission into the average contracted c.i.f. price of antimony ore, incidentals, cost of production, percentage of recovery ore, changes in import duties and other relevant factors. According to the existing formula adopted on the recommendations of the Tariff Commission, the fair selling price is increased| decreased by 1.1373 paise per Kg. for every increase|decrease of 1 cent per ton in the c.i.f. price of antimony ore. Upto December 1969, the prices were being reviewed half yearly for the periods January to June and July to December each year. On 27th June, 1970 the firm represented to the Department of Mines and Metals contesting the basis on which the fair selling prices were fixed from January, 1970 onwards. As a result, it was decided in consultation with the Tariff Commission that with effect from July, 1970 the prices could be fixed quarterly till closing stock levels of imported ore with manufacturer came upto 3 to 4 months' consumption and that once this is ensured the six-monthly price could again be restored.

1.78. The licensed annual capacity of the supplier is 1,000 tonnes for which, as per Tariff Commission formula, roughly 1,850 tonnes

of antimony ore are required. There was an understanding between the firm and the department that 20 tonnes of antimony metal would be supplied per month against the contracts of the Director General, Supplies and Disposals. The firm had informed the department in December 1969 that from January 1970 onwards it would supply 10 tonnes per month.

1.79. The quantities of antimony ore imported, metal produced and closing stock both of ore and metal for every quarter during the years 1969 and 1970 are shown in Appendix II and the fair selling price fixed for these years in Appendix III. From these it will be seen that the selling prices fixed for the year 1969, for the half-year ending 30th June, 1970 and for the quarter ending 30th September, 1970 were far less than those for the subsequent periods. Although the firm was producing sufficient antimony metal, as would be evident from Appendix II, the Director General, Supplies and Disposals, could not, in the circumstances mentioned below, secure supply, against the contract placed by him on the firm in May 1968 during the period when the selling price was much less and instead purchase the metal when the price was very much more, resulting in extra expenditure.

1.80. A contract was placed on the firm in May 1968 against an indent from Defence department for supply of 116.80 tonnes at the provisional rate of Rs. 9.595 per Kg. (subject to fixation of price by Government on basis of Tariff Commission's Report) which was amended on 4th December, 1968 to Rs. 9.355 per Kg. (provisional). The firm was to deliver approximately 20 tonnes per month—supplies to commence from September 1968 and to be completed by 31st March, 1969. On the request of the firm (6th December, 1968) which returned the contract but which was asked by the Director General, Supplies and Disposals, to go ahead with supplies at the amended provisional rate the delivery period was amended on 6th January, 1969 to read as "Delivery to commence from January 1969 in suitable instalments so as to complete the supplies by 31st August, 1969."

1.81. The first instalment of 20 tonnes offered by the firm for inspection in February 1969 was not inspected by the inspecting authorities because of difference between the specification (IS 2590|1964) stipulated in the contract and the specification (IS 211|1966) of the material offered for inspection. The firm requested (5th March, 1969) the Director General Supplies and Disposals, to amend the specification as well as the delivery period as "supplies to commence from March 1969 in suitable instalments so as to complete the supplies by 30th September, 1969". On the 27th March, 1969 the

Defence authorities, whose clarification about specification was sought for by the Director General, Supplies and Disposals, pointed out that the specification stipulated in the indent was "IS-211|1966" and not "IS-2590—1964" shown in the contract. It was observed that the specification originally shown in the indent was "IS-211/1966 Grade Sb. 99.5" but it was altered to "IS. 2590—1964|Grade 99 per cent" on the indent itself on the authority of "Ammunition Factory, Kirkee letter No. 2205|G.2|P.11" reported to have been written by the indentor on the 11th August, 1967 to the Director General, Supplies and Disposals. This letter is not available in the purchase file of the Directorate. The Directorate General while amending the contract on 22nd April, 1969 incorporating the correct specification did not amend the delivery period requested by the firm. On 3rd May, 1969 the firm pointed out the omission and asked for another amendment stating "supplies to commence from May, 1969 in suitable instalments so as to complete the supplies by 31st October, 1969". The period of delivery was thereupon extended on 22nd May, 1969 from 31st August, 1969 to 31st October, 1969 with reservation of rights to recover liquidated damages. The firm, however, instead of commencing supplies, on 5th June, 1969 returned the amendment letter stating that if it did not hear from the Director General, Supplies and Disposals by 15th June, 1969 about amendment to the delivery clause to read as "supplies to commence from June, 1969 in suitable instalments so as to complete the supplies by 30th November, 1969", the contract would be returned to the Director General, Supplies and Disposals, at his risk|and cost and it would not be liable for any consequences. On 28th June, 1969 the firm returned the acceptance of tender to the Director General, Supplies and Disposals.

1.82. On 21st July, 1969 the Director General, Supplies and Disposals, amended the delivery period extending it to 31st December, 1969 without any mention of reservation of rights to recover liquidated damages and returned the contract to the firm, which again returned the contract to the Director General, Supplies and Disposals, on 30th July, 1969 asking for issue of a fresh contract at the enhanced provisional rate of Rs. 10.312 per Kg. According to the advice of the Ministry of Law, there was no concluded contract and it was for the Director General, Supplies and Disposals, to decide whether he should or should not issue a fresh contract. On 17th January, 1970 the contract was amended reducing the quantity to 113.09 tonnes and revising the rate per unit from Rs. 9.355 per Kg. to Rs. 10.275 per Kg. and extending the delivery period upto "30th

June, 1970 or earlier". This amendment also was not acceptable to the firm.

1.83. On 6th May, 1970 the contract was further amended to provide for supply of 24 tonnes by 30th June, 1970 and 31.3 tonnes by 31st December, 1970 at the provisional rate of Rs. 37 per Kg. Supply of the former quantity was completed by 12th May, 1970 and of the latter by 18th January, 1971. No action has so far (August 1971) been taken to cover the balance quantity of 57.79 tonnes outstanding against the indent of Defence department.

1.84. By another amendment letter issued on 31st December, 1970 the final price of the 24 tonnes was fixed at Rs. 9.376 per tonne and at Rs. 46.497 per tonne for the 31.3 tonnes.

1.85. The incorrect specification in the contract place on the firm and delay in appropriately amending the contract resulted in extra expenditure of Rs. 12.05 lakhs.

[Paragraph 41 of the Report of C&AG (Civil) for the year 1970-71]

1.86. A representative of the Department of Mines and Metals stated during evidence: "The Tariff Commission has been periodically inquiring into the price structure for the antimony metal sold in the country. The Refinery is the only producing unit in the country and the price at which antimony is sold by the Refinery is fixed by the Department of Mines. The Tariff Commission takes into account the cost of the ore in stock, the cost of the ore which is purchased during the quarterly period and the cost average of the antimony ore utilised during the same period. Antimony ore is channelised through MMTC and there is no difficulty about verification. Figures of utilisation are important."

1.87. The Committee were informed that against the licensed annual capacity of 1,000 tonnes the production of antimony metal by the firm M/s.....during the period 1967-68 to 1971-72 was as under:—

Year	Tonnes
1967-68	871
1968-69	731
1969-70	614
1970-71	568
1971-72	700

1.88. During evidence a representative of the Department of Mines and Metals stated: "I would like to mention that there is no control, formal or informal, over distribution of antimony metal produced by Messrs..... The selling price of the metal produced by the Company is, however, fixed by the Department of Mines periodically, based on the pricing formula enunciated by the Tariff Commission. The Company sells its metal to Defence, P&T, Railways and also to other users."

1.89. The Committee were informed that about 20 tonnes per month of the antimony metal produced by the firm was made available for defence requirements. A representative of the Ministry of Supply stated during evidence: "There was no specific agreement that the firm would supply any particular quantity to the DGSD other than telling us that they would supply 20 metric tonnes against all the contracts of the DGS&D. Actual supply varied from year to year. In 1967 they supplied 500 tonnes, in 1968, 218 tonnes, in 1969, 57 tonnes and in 1970, 64 tonnes, in 1971, 406 tonnes."

1.90. The Audit para states that the firm had informed the DGS&D in December, 1969 that from January 1970 onwards it would supply only 10 tonnes of antimony per month. The Committee desired to know the action taken by the DGS&D when their allocation of 20 tonnes per month was reduced to 10 tonnes per month. A representative of the Ministry of Supply stated: "The firm wrote to us that they had reduced supplies to all their consumers by fifty per cent because of the cut in import of ore on account of the steep rise in price of the ore. They said that from 1st January, 1970 they would supply us at the rate of 10 tonnes, half of 20 tonnes; this is the circular they sent to other customers also."

1.91. The Committee desired to know the system followed in the Department of Mines and Metals to ensure that the firm supplied the antimony metal to various users at the fair rates fixed by the Tariff Commission. A representative of the Department of Mines and Metals informed the Committee: "It is just like any other non-ferrous metal, for instance zinc, where the position is similar. Here we depend upon the consumer to come to us and complain. If a complaint is received that the company is charging more than what is the fixed price, we take action."

1.92. In reply to a question the witness stated: "The only protection that the consumer has against being overcharged is that he can come to the administrative machinery which has fixed the price and we take up the question with the producer and sort things out".

1.93. According to the facts of the case given in the Audit paragraph against the contract placed by the DGS&D for supply of 116.00 tonnes of antimony in May, 1968, the firm was required to deliver approximately 20 tonnes per month commencing from September, 1968 and supplies were required to be completed by 31st March, 1969. The firm however returned the contract on the 6th December, 1968 and on the 6th January, 1969 the delivery period was changed to the effect that deliveries were to commence from January, 1969 and completed by 31st August, 1969. In this connection a representative of the Ministry of Supply deposed: "I shall explain the position. A lot of payment was outstanding and the firm said that they were not prepared to accept the contract. On that we wrote back to the firm asking them to accept the contract and that the question of price was under consideration. Our view was that although the price was notified by the Ministry of Mines and Metals, that should be a ceiling and as bulk purchasers we should be entitled to some reduction."

1.94. The Committee enquired that since the selling price of the antimony was fixed by the Tariff Commission, what was the need for entering into negotiations with the firm about the price of the metal. The Secretary, Ministry of Supply stated: "The price is fixed by the Ministry of Mines and Metals on the basis of the Report of the Tariff Commission. But the Department of Supply always tries to get a reduction. In the case of cars, the price is fixed by the Ministry of Industrial Development, which is the price at which they sell to everybody. But we still tried to get some sort of a discount because we were going to buy a large number of cars. Therefore, there is nothing to stop the DGSD from trying to get a discount. In this particular case, what happened was that some information was received by the DGS&D that the firm was selling to others at a lower price, there is no justification for them to insist on charging us the price fixed by the Ministry of Mines and Metals. Therefore, some negotiations were held with the firm and ultimately they got a discount of Rs. 35. It is just an effort made by the DGS&D to get a lower price."

1.95. A representative of the DGS&D informed the Committee that "Up to November 1968 the price was under consideration because we were not accepting the price notified by the Ministry of Mines and Metals."

1.96. The Committee pointed out that since there was a Governmental machinery for fixing the price, any adjustment in the price

could have been made subsequently without delaying the execution of the contract. The Secretary, Ministry of Supply stated: "The firm was not prepared to make the supply until the price was settled." He added: "the Ministry of Mines and Metals notified the price on the basis of the report of the Tariff Commission. But we took the view that the price fixed by the Ministry of Mines and Metals was only a ceiling and that it was open to DGS&D to make an attempt to get some further discount from the firm. Therefore, negotiations were held with the firm and we were able to get a discount of Rs. 35 per ton."

1.97. When the Committee drew attention to the fact that during the period the negotiations were held the price of the metal had gone up very high as compared to the reduction of Rs. 35 per tonne secured by the DGS&D, the witness replied: "That is a different matter. It is not that the effort was not made to get a large reduction. But the firm was able to give only Rs. 35 reduction. But the fact of the matter is and I personally think that the action in the DGS&D was correct because the purchase Officer found that the firm was selling to outsiders at a lower price."

1.98. In reply to a question the witness informed the Committee that negotiations with the firm for reduction in prices had been commenced in April, 1968 i.e. even before the contract was entered into in May, 1968 and concluded only in November, 1969.

1.99. The Audit paragraph states that the first instalment of 20 tonnes offered by the firm for inspection in February, 1969 was not inspected by the inspecting authorities as the metal offered was not according to the specification. A representative of the Ministry of Supply stated: "The inspector informed us that the specification which was given in the contract was not the correct specification because that pertained to aluminium. Therefore, he was not prepared to inspect it."

1.100. In reply to a question, the witness explained: "In the contract, the specification given was IS-2590/1964. That is based on the indent received by the DGS&D. In that indent, the specification mentioned was IS-211/1966. It has been corrected in handwriting as IS-2590/1964. In the contract, this specification was mentioned. This being not a correct specification, the firm came forward to say that the contract should be amended."

1.101. Explaining the circumstances leading to discrepancies in the specification, the Secretary, Ministry of Supply stated: "When

the indent is received from the indantor, the specifications are mentioned there. Unfortunately, what happened was that the correct specification for antimony was struck out. That specification was scored out in hand and another specification was given which was for aluminium and not for antimony. We had held an inquiry. It was done by the Defence people in the Ammunition Factory at Kirkee. We have now got the report. We sent two officers—one from the Defence and one from the DGS&D to investigate how this change was made in the specification. We have found as a result of the inquiry that it was done in the Ammunition Factory, Kirkee itself and the changed A/T was placed on the firm and the inspector looked into the thing and he said it was not according to the specifications. That is the position.”

1.102. Asked whether the Inspector was not aware of the different specifications given in the indent, the witness stated; “The Inspector does not get the noting. He gets a copy of the A/T only. In the A/T wrong specification was given because of the fact that in the nothing the correct specification had been scored out and the wrong specification had been written in ink. Therefore, in the A/T is the wrong specification that has been given.”

1.103. A representative of the Ministry of Defence stated: “The original indent which is not traceable is dated 13th May, 1967. There were three indents placed on DGS&D, one for aluminium, another for antimony which is the subject of to-day’s discussion and the third one for lead. According to Kirkee factory, who placed all the three indents these were despatched on the same date in a single cover. Unfortunately, it is understood that the original indents were not received in the DGS& D’s office.”

1.104. The Committee were, however, informed by the Secretary, Ministry of Supply that only the indent relating to aluminium was available on the files of the DGS&D and the other two indents were not received in DGS&D.

1.105. The Committee enquired whether the Ministry of Defence had any proof to show that all the three specifications were sent in one single cover. A representative of the Ministry of Defence stated: “We really have no proof because the despatch diaries of those dates have been destroyed by the Ammunition Factory. But I want to submit one thing. According to our procedure, copies of the indents were also endorsed to two or three other agencies. One is the Chief Inspector of Metals at Inshapore and the other is the Inspector Armaments at Kirkee and the third is the DCDA who is

the accounts man in Kirkee. According to our information the secondary addressees received the original indents in respect of both aluminium as well as antimony. However, the factory has been sending reminders to the DGS&D in respect of this antimony also. First reminder was sent on 12-7-1967, second in 10-8-1967, no reply was given, and third reminder was given in January 1968. DGSD sent telegram on 14-2-1968 saying they have not received the original indent."

1.106. As regards the receipt of reminders in the DGS&D, a representative of the Ministry of Supply stated: "We investigated into the matter. The first reminder was on 10th August 1967, which was received by the DGSD and passed on to the Defence Liaison cell on 24th August, 1967. Original indent was not received.... Unless there is record of the original indent the subsequent correspondence cannot be linked to it. It was passed on to the Defence Liaison cell. This is in the DGSD office."

1.107. The Committee were informed that an inquiry had been held into changing of specification of antimony on the indent. In a note on the subject, the Ministry of Defence have stated:

"An enquiry into the matter was conducted by a Joint Team comprising of a representative of Department of Defence Production and a representative of the DGS&D. The findings of the enquiry are as follows:

Originally Ammunition Factory Kirkee forwarded their Indent No. AFK|2203|67|G-2 dated 13.5.1967 for 116.80 M|Ts of Antimony to DGS&D under AFK letter No. AFK|2203|67|G-2 dated 13.5.1967. This indent was sent to the DGS&D alongwith the other two indents one for Lead Pig (Indent No. AFK|2204|67|G2) and another for Aluminium Ingots (AFK|2205|67|G-2 dated 13.5.1967), all in a single envelope addressed to DGS&D. The indents in question were also endorsed to Chief Inspector of Metals Ishapore, Chief of Inspectorate of Armaments, Kirkee DCDA In-charge, Accounts Officer Ammunition Factory, Kirkee and the DGOF. The specification given in the Indent for Antimony was as follows:—

"Antimony 99.5 per cent—IS 211—1966 Grade SB 99.5"

Ammunition Factory Kirkee subsequently issued expeditors on 10.8.1967 and 30.1.1968 to DGS&D for coverage of Indent for Antimony. No replies to these expeditors were received from DGS&D. On 14.2.1968, Defence Liaison Officer at DGS&D sent a telegram to Ammunition Factory, Kirkee with reference to an expeditor sent by

AFK. on 8-2-68, in respect of coverage of the indent dated 13.5.1967 for Aluminium Ingot, stating that the indent for Aluminium Ingot could not be traced in DGS&Ds' office. On receipt of this telegram AFK forwarded a duplicate copy of the indent for Aluminium Ingots alongwith a duplicate copy of the Indent for Antimony under cover of the same letter No. AFK|2205|G2|PII dated 20.2.1968 to DGS&D.

While forwarding the copy of the indents for Antimony, the already existing entires regarding specifications were crossed in ink and the following remarks were added in ink by the staff concerned at AFK:

“IS 2590—1964 Grade 99%—Amended vide AFK letter No. 2205|67|G2|PII dated 11-8-67”.

The above amendment endorsed on the copy of the indent for Antimony was actually pertaining to and should have been made on the indent for Aluminium, but due to oversight the amendment was made on the indent for Antimony. This error apparently occurred on account of the fact that duplicate copies of both the indents were being forwarded simultaneously and in one and the same envelope. The endorsement thus erroneously made in ink as above on the duplicate copy of the indent for Antimony, however, did not carry any authentication by either the officer who had earlier signed the indent or by any other responsible officer. DGS&D's office apparently acted on the amended version of the specification erroneously indicated in ink on the duplicate copy of the indent for Antimony, as above.”

1.108. In regard to the action taken by the Defence Liaison cell in the office of DGS&D on each reminder and reasons for delay, the Ministry of Defence have stated:

“Ammunition Factory, Kirkee sent two expeditors addressed to DGS&D, one dated 10th August 1967 and the other dated 30th January 1968. DGS&D has stated that the expeditor dated 10th August 1967 and the entry made against the receipt shows that it was passed on to the Defence Services Liaison Cell on 24th August 1967, but at this distant time it is not possible to produce the record viz. the Peon-book through which the communication was sent to the Cell and according to the Standing Instructions the life of the Peon-Book is one year. Enquiries made in the Defence Liaison Cell have further

revealed that the above communication said to have been forwarded by the DGS&D is not available on the files of the cell nor is there any record to show the receipt of the same in the cell. Apparently therefore the communication was not received in the Defence cell.

As regard the expeditor from AFK dated 30th January 1969, DGS&D has stated that this was received in the Central Indent Section on 3rd February 1968, was diarised on that date and against the entry it has been indicated that the communication was returned to Armament Factory Kirkee, on 20th February 1968. It was therefore never sent to Defence Cell.

Since neither of the two expeditors was received in the Defence Liaison Cell, as clarified above, the question of taking action by them did not arise. It must also be mentioned that had there been any serious lapse on the part of Defence Liaison Cell, it was open for the Ministry of Supply to bring the same to the notice of this Ministry to enable necessary corrective action to be taken."

1.109. The Audit paragraph further states that the firm made a request to the DGS&D on the 5th March, 1969 to amend the specification as also the delivery period. The DGS&D amended the specification on the 22nd April, 1969 but did not amend the delivery period as requested by the firm. Giving reasons for the time taken in sending a reply to the firm a representative of the Ministry of Supply stated: 'On receipt of this letter a reference was made to the indenter to find out the correct specification. We wrote on 11th March 1969 and reply was received on 25th March 1969. On this amended was issued on 22nd April 1969 when the specification was changed."

1.110. In a subsequent note furnished at the instance of the Committee, the Ministry of Supply have stated:

"Indenter's letter dated 25th March 1969 containing request for change in specification was received in DGS&D on 31st March 1969. The relevant purchase file had been sent to Concurrent Audit on 20th March 1969 and it was received back in the DGS&D from the Concurrent Audit Section on 21st April 1969. The draft amendment regarding change in specification was put up separately on 7th

April 1969 and was approved on the same day. The stencilled amendment was put up on 18th April 1969. It was also approved on the same day. The fair amendment was put up on 21st April 1969 which was signed by Asstt. Director on 22nd April 1969 and it was issued the same day. Apparently, action for issuing the amendment letter changing the specification had been initiated even when the file was with Audit."

1.111. The omission to change the delivery period as requested by the firm in their letter dated 5th March 1969 (which was replied to by the DGS&D on 22nd April 1969) was pointed out by the firm on the 3rd May, 1969. On the 22nd May, 1969 the DGS&D extended the period of delivery from 31st August, 1969 to 31st October, 1969. Asked why extension was given, the representative of the Ministry of Supply stated: "There was no option for us except to give extension."

1.112. The extension granted on the 22nd May, 1969 was with reservation of rights to recover liquidated damages. This was not accepted by the firm and accordingly in their letter of 5th June 1969 the firm asked the DGS&D to amend the delivery clause so as to enable them to complete the supplies by 30th November, 1969. As no reply was received from the DGS&D, the firm returned the acceptance of the tender on 28th June 1969. The Committee were informed that a further extension was given to the firm on the 21st July, 1969 whereby the firm was to commence deliveries in August, 1969 and complete the supply by 31st December, 1969. On the 30th July, 1969 the firm returned the contract and asked for fresh contract at enhanced rate. Ultimately the contract was amended on 17th January 1970.

1.113. The Committee take a serious view of the mistake in indicating the specification of antimony in the indent by the Ammunition Factory, Kirkee and the delay in appropriately amending the contract for the supply of the metal in the Office of the DGS&D. These cost the exchequer additional expenditure of Rs. 12.05 lakhs. The Committee desire that responsibility should be fixed for the mistake that occurred in the Ammunition Factory. The delay in DGS&D's office at each stage should also be investigated.

1.114. It is surprising that at the time of entering into the contract for the purchase of antimony it was not noticed that the specification given was applicable to Aluminium. It was not for the first time

that the DGS&D entered into a contract for the supply of Antimony. Further regrettably the Inspector also did not attempt to correct the mistake. These lapses appear to the Committee to be of sufficiently grave nature and call for detailed investigation.

1.115. Antimony, an essential raw material for Defence Production, storage batteries and vital alloy metals, is produced by a single firm in the country. The fair selling price of the metal is fixed by the Department of Mines and Metals. The selling price which ranged from Rs. 8,828 per tonne to Rs. 10,560 per tonne during the period 1st January 1968 to 30th September 1970, jumped to Rs. 46,532 per tonne w.e.f. 1st October, 1970. The supplies against the DGS&D's contracts were erratic, the figures being 218 tonnes in 1968, 57 tonnes in 1969, 64 tonnes in 1970 and 406 tonnes in 1971. The annual production of the metal by the firm ranged from 568 tonnes to 731 tonnes during the period 1968-69 to 1971-72. The obvious inference is that when the price fixed is low, the firm finds it profitable to divert the supplies to the open market. The Committee understand that there is no control over distribution of the metal. They desire that the feasibility of imposing some control should be considered in view of the vital Government needs.

1.116. The Committee understand that the firm is now getting imported antimony through the Minerals and Metals Trading Corporation. They desire that the Ministry of Industrial Development should explore other sources for the manufacture of the metal so as to end the present monopoly.

Purchase of Tents

Audit Paragraph

1.117. To cover a demand received from the Director of Ordnance Services, Army Headquarters, New Delhi, for supply of 7,000 'tents private MK-3-flies outer', a limited tender enquiry to all registered suppliers and other known sources of supply was issued by the Director General, Supplies and Disposals, and the tenders opened in March 1967. Since the offers received were substantially higher than the last purchase prices, negotiations were resorted to and thereafter order for the entire quantity was placed in June 1967 on firm 'A' of Delhi at the rate of Rs. 447.50 each (including packing charges), sales tax extra, f.o.r. Delhi, the total value of the acceptance of tender being Rs. 31.3 lakhs. The contract provided for supply of tents worth Rs. 3 lakhs every month commencing from 31st

July 1967, the first instalment of which was to be tendered for inspection and for despatch by 31st July 1967 and 31st August, 1967 respectively and the last instalment for inspection and for despatch by 15th May 1968 and 15th June 1968 respectively. It further provided for recovery of agreed pre-estimated liquidated damages (and not by way of penalty) at one per cent of the price of tents, delivery of which for each month or part of a month fell in arrears, subject to maximum recovery of 3 per cent.

1.118. Firm 'A' was not registered with the Director General Supplies and Disposal, but was registered with the National Small Industries Corporation as a small scale industries unit. Since it was not registered with the Director General, Supplies and Disposals, the firm had been asked to deposit Rs. 78,312 as security money. Subsequently, however, on the strength of a competency certificate furnished by the firm from the National Small Industries Corporation, deposit of the security money was waived by the Director General, Supplies and Disposals.

1.119. Firm 'A' was a partnership concern registered under the Indian Partnership Act. In November, 1967 the firm had reported to the Director General, Supplies and Disposals, that due to a dispute between the partners and late payments by the Directorate of Supplies (Textiles), Bombay, it could commence production for the order only in November, 1967. It tendered the first instalment of 50 tents for inspection on 16th November, 1967. In April, 1968, the firm requested extension of delivery period by six months and in May, 1968 the date of completion and delivery was extended by the Director General, Supplies and Disposals, upto 30th June, 1968 with reservation of rights to recover liquidated damages. Due to unsatisfactory performance of the firm and urgency of its requirements the indenter was not agreeable to extension of the delivery period. By 1st July, 1968 the firm could supply only 640 tents. The order for the balance 6,360 tents was cancelled in August, 1968 at the risk and expense of the firm.

1.120. In response to the risk purchase tender enquiry issued in August, 1968 by the Director General, Supplies and Disposals, the lowest offer, viz., Rs. 447.50 f.o.r. Delhi, received was from firm 'A' and this was ignored by the Director General Supplies and Disposals, as the firm regretted its inability to furnish necessary security deposit. The next two lowest acceptable offers were from firms 'B' and 'C'. Reports from the Inspectorate of the Director General, Supplies and Disposals, revealed that (i) machinery, equipment and supervising staff in the premises of firm 'B' were the same as those of firm

'A' (the defaulter) and (ii) firm 'C' was only a change of name of the defaulting firm 'A'. Legal advice in the case was that since this was a risk purchase, the offer of firm 'B' could be ignored only on the ground of its want of capacity to produce the tents, and the burden of proving that would be on the Director General, Supplies and Disposals. The Department considered that since firm 'A' had supplied part quantity against the original contract, it could not be stated that firm 'B' did not have the capacity to manufacture the tents. Therefore, a contract was placed in December, 1968 on firm 'B' (at extra cost of Rs. 9,857), subject to the firm furnishing security deposit of Rs. 1,42,782 by 15th January, 1969. No acknowledgement of the contract placed having been received by the Director General, Supplies and Disposals, for more than a month, a field officer of the Progress Wing of the Director General, Supplies and Disposals, on visiting the premises of firm 'B', found that no such firm existed at the address given by the firm. It also appeared that the proprietor of firm 'B' was the proprietor of firm 'A'. A further report from the Inspectorate disclosed that firm 'B' had suspended its business activities. In such circumstances, the acceptance of tender on firm 'B' was cancelled in July, 1969 at the risk and expense of that firm; this letter of Director General, Supplies and Disposals, was received back undelivered.

1.121. The balance of 6,360 tents was eventually purchased from firm 'D' at Rs. 487 each f.o.r. Jodhpur resulting in extra expenditure of Rs. 2.54 lakhs.

1.122. The extra cost of Rs. 9,857 could not be recovered from firm 'A' as the risk purchase on firm 'B' did not materialise. Demand notice dated 29th December, 1969 issued to firm 'B' calling upon it to deposit Rs. 2.54 lakhs, being the extra cost in repurchase, was received back undelivered.

1.123. In its tender firm 'B' had stated that it was a proprietary concern and had also mentioned the name of the sole proprietor. The Ministry stated (June 1971) that "as firm 'B' is no longer in existence we have to consider the desirability of resorting to legal proceedings against the sole proprietor. However, how best the situation could be tackled is already engaging the attention of the Director General, Supplies and Disposals."

1.124. No further orders have been placed by the Director General, Supplies and Disposals, on firm 'A'. However, subsequent to cancellation of the acceptance of tender on firm 'A' in August, 1968, the

National Small Industries Corporation, in some cases, had included the name of firm 'A' in the list of firms to whom tender sets were issued by the Corporation free of charge.

1.125. It may be added that three contracts placed by the Director of Supplies (Textiles), Bombay, on firm 'A' in August and September, 1966 were cancelled during April to November, 1968.

1.126. On the first occasion along with firm 'A' a number of tenders had been received from firms registered with the Director General Supplies and Disposals; the rates offered by four of them were more than the rate of firm 'A' by only Rs. 2.50 to Rs. 9.50 per tent.

1.127. During August, 1968 to February, 1970 the Defence requirements of tents remained substantially unfulfilled on account of failure of the firm to supply tents against Director General, Supplies and Disposals' contract and this resulted in hardship to troops.

[Paragraph 42 of the Report of the Comptroller and Auditor General of India (Civil) for the year 1970-71.]

1.128. During evidence the Committee desired to know why the tender of firm 'A', which was not registered with the Director General, Supplies and Disposals, was accepted. The Director General, Supplies and Disposals stated: "So long as they are registered with the National Small Industries Corporation we do consider their tenders. And in this case, not only were they registered with the NSIC but they were also past suppliers."

1.129. On being asked whether any investigation was made about the performance of the firm, the witness added: "This particular firm were past suppliers. In October, 1965 the Inspectorate were requested to find out the business activities in respect of capacities to manufacture according to specification and so on, of the firms in the tent manufacturing field. They had at our request done a study of the capacity of a number of tent manufacturers and firm 'A' had been shown as one of them, after a verification was made. This was done in October, 1965. They had been shown as capable of manufacturing specification tents to the tune of about 4 to 5 lakh of rupees, every month.

On 1st May, 1967, there was a report again from the Inspectorate which dealt with the capacity of various tent manufacturers to manufacture to specification. Now, they had been shown as two different categories of people. First category is one who are mills but also produce tents as a side-business and another is one who buy the basic

materials from the mills and produce the tents. In the second category there are two sets of people. One is those who are capable of manufacturing strictly according to specifications and among these is Firm 'A', who do not produce basic materials themselves but buy them and then fabricate."

1.130. The Committee pointed out that in terms of the contract with the Firm 'A', the firm was required to supply tents worth Rs. 3 lakhs every month commencing from 31st July, 1967. However, the firm had tendered the first instalment of 50 tents for inspection only on 16th November, 1967. Asked about the action taken against the firm for not adhering to the time schedule, the witness stated: "This contract was one of a number of contracts on which supplies to the tune of Rs. 20 crores were to come through within a year. Now, they were being followed up but in this particular case, the firm had started production only some time in February. They wrote to us in November to say that they had just been able to start production because they had so many difficulties."

1.131. To a question whether the time schedule was altered, the witness replied, "The firm did not ask for it."

1.132. It was explained that one of the reasons for the delay in the supplies by the firm was that for about three months the question of deposit of security money by the firm was not settled. In this connection, the Secretary, Ministry of Supply deposed: "When the order was placed with the firm, they were asked to give a security deposit of 2½ per cent. At that time, the firm said that this security deposit should be waived. Now the NSIC issued the competency certificate to the firm and when this certificate was received by us, then a decision was taken to waive the security deposit. They were registered with the N.S.I.C. but the competency certificate was not received."

1.133. The Committee enquired whether any enquiry was made from the National Small Industries Corporation about the position of the firm. The Director General, Supplies and Disposals informed the Committee that no such inquiry was made. The Chairman, National Small Industries Corporation stated in this connection that "We received no intimation from the Ministry of Supply; and did not, therefore, enquire from them. The normal procedure is that the firm"

that are registered with the N.S.I.C., the tender forms are supplied by the Ministry of Supply."

1.134. The Audit para states that on the strength of a competency certificate given by the National Small Industries Corporation, the deposit of security money by the firm was waived. Asked about the basis on which the competency certificate was normally given by the N.S.I.C., the Chairman, N.S.I.C. explained: "As far as the competency certificate is concerned, as rightly pointed out by the Secretary, it is basically a promotional work that we are doing for the development of small scale industries. We depend upon the Small Industries Services Institutes which are the technical wing of the Ministry of Development to assess the capacity of the firm and their technical officer visits the unit to assess the capacity as far as the machine is concerned what they produce and they also occasionally study the financial balance sheets and relative documents and then they give us a report on the basis of their findings that the firm is in a position to manufacture a number of things taking into account the orders they may be having from the DGS&D or some other parties. SISI tells us that the unit is in a position to manufacture so much per month. On that basis the N.S.I.C. gives the competency certificate."

1.135. In reply to a question whether the capacity and the financial position of the firm was assessed by the officers of N.S.I.C., the witness stated: "Small Industries Services Institutes must have gone and they must have given a report." He also informed the Committee that after taking all factors into consideration it had been recommended by N.S.I.C. that the firm was capable of supplying 7,000 tents.

1.136. The Committee desired to be furnished with the relevant files of N.S.I.C. for perusal but the Chairman, N.S.I.C. stated: "We were made aware of this complaint in the month of January, 1972. By then the files available with us have been weeded out, under our normal procedure. Normally when once the A/T has been placed and we receive no report, our practice is to weed out the file."

1.137. The Committee enquired whether apart from the recommendations of the N.S.I.C., the DGS&D had made any assessment of the capacity of the firm. The Secretary, Ministry of Supply stated: "As explained by the Director General, this firm was a past supplier also. They have executed success fully in the past and their

performance has not been unsatisfactory . . . They were small quantities no doubt. The firm had executed six orders.

	Rs.
A/T 631 of 1.4.65	.23,733/-
1801 of 14.12.65	1,59,900/-
69 of 19.1.66	1,94,000/-
446 of 31.3.66	70,875/-
454 of 31.3.66	19,130/-
619 of 27.5.66	80,144/-

These were the various orders executed by this firm. And then, as explained by the D.G., our Inspector and the Defence Inspector who visited the factory of Firm 'A' also gave a report that firm was capable of manufacturing and supplying tents worth about Rs. 3-4 lakhs (per month)."

1.138. Referring to the performance of the firm in the past, the Committee enquired whether at the time of finalising the negotiations with the firm, the DGS&D were aware of the cancellation of the three contracts placed by the Director of Supplies (Textiles) Bombay on the firm in August and September, 1966. The Secretary, Ministry of Supply informed the Committee that three contracts involving Rs. 19 lakhs entered into with the firm had to be cancelled because of the firm's failure to make the supplies. According to him the firm remained closed under a lock-out and there was a strike and a lay off.

1.139. On being asked as to why a fresh contract involving Rs. 31 lakhs was entered into with the firm when the firm had not executed orders worth Rs. 19 lakhs in the past, the witness stated: "That is what I mentioned that the demand at that time was very high and the question was whether to utilise the capacity of this firm or not. The firm represented that they were under a lock-out and therefore they could not manufacture the goods. Then they pointed out that the lock-out had been lifted and they would be in a position to start production. As a matter of fact, a representation was received that the firm had again commenced production. On that basis, a view was taken that the capacity was available and the price was the lowest. As a matter of fact, I must point out that what weighed with the Purchase Officer was the fact that the price quoted by the firm was very low. Unfortunately, we have been attaching undue importance to the question of price. I think this is a wrong thing. Now, we have taken a decision that we should not always think in terms of

getting the lowest price but we should also see that the orders placed on the firms materials. In the past, we paid too much attention to price."

1.140. In a note furnished at the instance of the Committee, the Ministry of Supply have stated: "It would appear from the final purchase proposal; in the file that the proposed cancellation of orders for tentage valued at Rs. 19.54 lakhs placed by D.S. (Tex), Bombay swayed the case in favour of the firm as it was assumed that the load on them would thereby be considerably reduced. It has also been recorded that the lock-out which the firm had been under had been lifted and that the supplier had commenced production. On the basis that orders worth Rs. 19.54 lakhs would be cancelled by D.S. (Tex), Bombay, it was assumed that the firm would be carrying a load of Rs. 1,42,750 only. It was, therefore, decided to book their capacity to the maximum extent possible. It would also appear from the file that the final proposals were framed on the basis of the lowest rates for delivery within 10 to 12 months."

1.141. During evidence the Secretary, Ministry of Supply deposed: "Actually, a view was taken in the DGS&D—which I personally feel is not correct—that because the firm had been unloaded and those orders had been cancelled, the firm would not be carrying any load and therefore, their capacity could be utilised—i.e. 3 to 4 lakhs rupees per month and this order could be placed. Personally I do not agree with that view."

1.142. The Audit para states that by 1st July, 1968 the firm could supply only 640 tents against 7,000 contracted to be supplied and the order for the balance 6,360 tents was cancelled in August, 1968 at the risk and cost of the firm. Asked as to the action taken against the firm for their default, the Director General, S&D stated: "Under the contract, we could cancel it at their risk and cost. . . . We can proceed against them only to the extent of cancelling the contract at their risk and cost, buying elsewhere and recovering the extra money from them."

1.143. To a question whether any action could be taken for the time lag in the supplies or the loss suffered on account thereof, the Secretary, Ministry of Supply stated: "The law on the subject, as advised by the Ministry of Law, is that you can recover the difference in price."

1.144. The Committee drew attention to the risk purchase tender enquiry issued in August, 1968 and enquired why the risk purchase

contract was placed on firm 'B' which was known to be the same concern as the firm 'A'. The Secretary, Ministry of Supply explained: "That is because I have got to proceed according to the advice given to me by the Ministry of Law. They have said that if there is a lower offer, you cannot ignore that lower offer."

1.145. The Committee were informed that in a contract of risk purchase the main point to be seen was that only the lowest offer was accepted and whether the firm whose offer was accepted was registered or unregistered was no bar. On being pointed out whether a registered firm who had failed to supply goods could secure a new order on the basis of lower quotations even though unregistered, the Secretary, Ministry of Supply stated: "That is the correct position. In the case of risk purchase if we are going to succeed in recovering the risk purchase amount, then we cannot ignore the lower offer."

1.146. Asked whether before placing an order on an unregistered firm, it was not necessary to find out the capacity of the firm, the DGS&D stated: "That was done and the Inspector reported that the premises, machinery, everything is the same as that of Firm 'A' and he did not recommend the firm but to make sure that there is no missing of the chance of recovering the risk purchase amount."

1.147. The Secretary, Ministry of Supply stated during evidence: "We do not dispute these facts but the position is that this was done on the advice given by the Law Ministry. Now we have taken a final decision that we shall neglect such firms in future. We will confine ourselves to the recovery of general damages. If we are satisfied that the firm will not be in a position to produce the goods, then it is no use placing the order on such a firm but unfortunately in the last 20 years or so based on legal advice we had no option but to place order against risk purchase on a firm which may be registered or not so long as its offer was the lowest."

1.148. The Committee were informed that the advice of the Ministry of Law on the placement of orders on firm 'B' was not obtained, but only the Contract officer in the DGS&D was consulted. The relevant extracts from the notings made in the files of DGS&D are reproduced below:

* * * * *

It will thus be seen that (i) the R/P A/T cannot be placed on the defaulting firm because they are not agreeable to furnish security deposit in advance in terms of O.O No. 69 dated 3-6-1960.

- (ii) M/s. R. K. Industries and M/s. Continental Industries have not been recommended by the Inspector.
- (iii) Although competency certificate has been furnished by C.L.O. NSIC Re. M/s Textile International, the firm have not been recommended by the Inspector.
- (iv) Bankers have indicated monetary limits re: M/s Textile International and M/s. Continental Industries.

11. Contract Officer in other risk purchase cases had earlier advised us that it is the duty of the purchase officer to mitigate the damages and we should accept the lowest acceptable offer in risk purchase cases. Since M/s Gupta Brothers, the defaulting firm, have not furnished 10 per cent S.D. in advance, we cannot accept their offer. Contract Officers may kindly advise whether the other lower offers of M/s. R. K. Industries, M/s Textile International, M/s. Yogen-dra Knitting Mills and M/s Continental Industries can also be passed over in view of the one or other reasons discussed at para 10 above and if so whether we shall be within our right to recover the risk purchase amount from the defaulting firm, as a result of passing over of lower offers accepting the next higher offer.

* * * * *

In view of this, it is felt that we have no other alternative but to place order on M/s R. K. Industries. Perhaps, M/s Gupta Bros. might have started this firm to avoid payment of large amount as S/D in advance. But in view of the legal position we have to place order on M/s R. K. Industries for the full quantity with 5 per cent S/D is usually done.

The firm however, has not submitted their I.T.C.C. nor have they intimated the name of their bankers. However, contract officer, in other risk purchase cases, has stated we cannot ignore such offers in risk purchase cases for want of ITCC or Bankers report (File No. TWL2|202|62|392|A|P|RP|273|463)."

* * * * *

If the defaulting firm has failed to furnish security deposit as demanded, we can ignore them.

2. As regards the next higher firms, if we ignore them on the ground of want of capacity to produce the stores the burden of proof would be on us. I do not know whether we will be in a position to discharge that burden. If the Dte. is satisfied on that point it is a matter for them to decide. If they are so satisfied, then the order can be placed on the next higher."

The Committee were informed that the decision in the case had been taken at the level of the then Director General, S & D, who was a different man than the present incumbent. In reply to a question, the Director General, S & D stated: "If I were there, I would have taken a different decision."

1.149. On being asked about the legal position regarding Risk Purchase contracts, the Joint Secretary, Ministry of Law stated: "In DGS&D contract, there is a special feature regarding risk purchase. To conform to that, the lowest acceptable offer will have to be taken. If the firm has no capacity, certainly it can be ignored. That is what we said. It can be ignored only on the ground of want of capacity to supply. Of course, if the facts were known, we could also, like all reasonable men, ask the same thing. . . . This is a special procedure, under the general law. The remedy is to recover the difference between the contract price and the market price on the date of breach from the firm—if the firm is there."

1.150. In reply to a question as to what would be the advice of Ministry of Law in view of the facts given in the present case, the witness stated: "Naturally our advice would be that it should have been possible to ignore the offer."

1.151. The paragraph brings out that even after the orders for debarring the firm from future contracts had been issued the firm remained on the list of firms to whom tender papers were issued by the NSIC free of charge. Giving reasons for this, the Chairman, NSIC stated: The first time I came to know about the bad performance of this firm was from the report of the Auditor General endorsed to NSIC. That was in January 1972. Immediately, thereafter, I took the action to deregister the firm from the Government's purchase programme, which I am empowered to do." The witness added: "I had no information about it till the Audit Report came." In this connection, the DGS&D stated: "This should have been intimated to the NSIC. There was a lapse."

1.152. The Committee note that an order for supply of 7,000 tents valued at Rs. 31.3 lakhs was placed on firm 'A' of Delhi in June, 1967 solely on the ground that the rate offered by the firm was the lowest. The past performance of the firm was not at all taken into consideration. The firm which was not registered with the Director General, Supplies and Disposals had failed to make supplies against three contracts placed by the Director of Supplies (Textiles

Bombay in August-September, 1966 and as a result the contracts involving Rs. 19 lakhs had to be cancelled. The firm's failure to keep up its contractual obligations in the past was not only overlooked at the time of awarding a new contract worth more than Rs. 31 lakhs but was in fact considered by DGS&D as a factor in favour of the firm. This was admittedly a wrong decision which the Committee desire should be gone into with a view to fixing responsibility.

1.153. The Committee further note that as a result of the firm's failure to make supplies against the fresh contract involving more than Rs. 31 lakhs, the DGS&D placed a contract for risk purchase on firm 'B'. This firm was none other than the firm 'A' under a different name. The fact that firm 'B' was the same as firm 'A5' with only a difference in name was known to DGS&D but they nevertheless placed the Contract with firm 'B' because the rates quoted by them were the lowest and a strict interpretation of law on the subject enjoined that only the lowest offer was to be accepted. According to the representative of the Ministry of Law in a risk purchase tender the lowest offer could be ignored if it was established that the firm making the lowest offer had no capacity to supply. The Committee are of the opinion that keeping in view their past performance it could be safely presumed that the firm lacked adequate capacity. They, therefore, feel that instead of taking a firm decision on this aspect the easier course of taking shelter behind the letter of the law was resorted to. In fact the Committee were informed that in the present case, the advice of the Law Ministry would have been that it should have been possible to ignore the offer of firm B. The Committee desire that a thorough investigation should be made with a view of fixing responsibility as also for laying down proper guidelines for the future.

1.154. The Committee find that orders issued by the DGS&D in 1969 debarring the firm from future contracts were not communicated to the National Small Industries Corporation with whom the firm was registered. The matter came to the notice of NSIC only in 1972 through the Audit Report. This is a serious lapse for which the responsibility should be fixed.

Purchase of Water Tube Boiler

Audit Paragraph

1.155. Against advertised tender enquiry issued by the Director General, Supplies and Disposals in April 1969 for procurement of

one water tube boiler indented by the Director, National Sugar Institute, Kanpur, three offers were received from firms A, B and C in May, 1969. Of the three offers, the two lowest (of firms B&C) were for boilers of a type different from that needed. Therefore, acceptance of the highest offer of firm A, which was technically suitable, for Rs. 6,15,000 was recommended (on 13th August 1969) by the indenter. As, however, funds for purchase of the boiler could not be provided by the indenter department, the Director General, Supplies and Disposals, cancelled the indent on 29th November 1969 and asked the indenter raise a fresh indent, if the boiler was still required, as and when funds were available. However, the Director General, Supplies and Disposals, continued correspondence with firm A, for extension of the period of validity of the offer and on 8th May, 1970 requested the firm to keep the offer valid upto the 15th June 1970 without.....any increase in price. On 18th May 1970 the firm agreed to keep its offer open upto 15th June 1970 with an increase of Rs. 25,000 over the price quoted.

1.156. After funds were available in April 1970 the indenter placed a fresh indent on 2nd May 1970 with the Director General, Supplies and Disposals, inviting reference to the latter's letter of 24th January, 1970 on this subject. This fresh indent was received by the Director General, Supplies, and Disposals, on 5th May, 1970. Without considering the offer for the increased amount, which being valid upto 15th June 1970 was still open, and availing himself of it the Director General, Supplies and Disposals, invited fresh tenders in June 1970. In response, only two tenders were received—one from firm A and the other from firm B. The latter had offered the same kind of boiler as it had on the first occasion. Firm A's offer which was for the same type of boiler it had offered earlier and was needed, was this time for Rs. 90,6000 for which the indenter also obtained approval of Government.

1.57. Considering the offer of firm 'A' as high the Director General, Supplies and Disposals, conducted negotiation with the firm in September 1970. The firm declined to reduce its offer and finally informed the Director General, Supplies and Disposals, in January 1971 that its offer be treated as withdrawn.

1.158. As no other offer conforming to the specifications was available, the Director General, Supplies and Disposals, in another attempt to bring down the price by providing steel to firm 'A' negotiated with the representative of that firm in February 1971. The firm repeated its revised offer of Rs. 9,06,000 and that, too, if assistance

for supply of steel was provided; otherwise, its offer would be Rs. 10,01,000.

1.159. Since the indentor was in urgent need of the boiler and there was no other source of supply the Director General, Supplies, and Disposals, had to conclude a contract in April 1971 with firm 'A' at the cost of Rs. 9,06,000 with assistance for supply of steel and also deviation in the standard force majeure and liquidated damages clauses.

1.160. From mid-November 1969 the general price index exhibited a disconcertingly sharp upward trend in India. From 1st January 1970 billet prices were increased by about 9.5 per cent.

1.161. Failure on the part of the Director General, Supplies and Disposals to avail of the offer of the firm valid upto 15th June 1970 with an increase of Rs. 25,000 over the earlier price quoted caused extra expenditure of Rs. 2.65 lakhs.

[Paragraph 43 of the Report of C&AG (Civil) for the year 1970-71].

1.162. The Committee were informed that the indent from the National Sugar Institute, Kanpur for the water tube boiler was received by the DGS&D on the 17th March, 1969 without the provision of funds and the availability of funds was communicated for the first time on 21st April, 1970, i.e. after about 13 months.

1.163. It is soon from the Audit paragraph that as the funds for the purchase of the boiler could not be provided by the indentor department the indent was cancelled by the DGS&D on the 29th November, 1969. Even after the cancellation of the indent the DGS&D continued correspondence with firm 'A' for extending the period of validity of its offer upto 16th June, 1970. The Committee desired to know the reasons for this. In a note, the Department of Supply have stated:

"The intention was that in case the indentor was able to provide the necessary funds in the immediate future, the DGS&D could cover the indent immediately if the firm also agreed to extend the validity of their original offer. This was the idea with which the firm was asked to extend the validity of their original offer. The firm also did extend their offer up to 28th December, 1969, but unfortunately the indentor would not provide funds even by that date. (The funds were provided on 28th April,

1970 and intimation thereof was given to the DGS&D on 29th April, 1970 for the first time but the firm had revised their offer upwards on 2nd January, 1970 by Rs. 25,000)."

1.164. The Audit paragraph states that on the basis of the fresh indent received on the 5th May, 1970, the DGS&D invited fresh tenders in June, 1970 without considering the offer of the firm which was valid upto the 15th June, 1970. The Committee enquired whether, in view of the rising prices and the fact that even in the earlier tender out of the three offers only the offer of the firm 'A' was technically acceptable, it was reasonable to expect that better offers were likely to be had, if fresh tenders were called for. In a note, the Department of Supply have stated:

"Para 109 of the DGS&D manual dealing with the "Consideration of Late/Delayed Tenders" stipulates; as under:—

"Tenders or modification to tenders received after the specified time of opening should not be considered at all. The Director General in consultation with the Associated Finance may, however, accept late tenders where such a decision is in the interest of encouraging indigenous production or where they specify that such a decision is necessary for want of adequate competition".

In this case the only consideration for accepting the revised offer of M/s. (with an increase of Rs. 25,000) could have been the want of adequate competition. The DGS&D wrote to M/s. on 8th May, 1970 stating that the increase in price of Rs. 25,000 intimated in their letter dated 2nd January, 1970 was not acceptable and that they should extend the validity of their original offer upto 15th June, 1970. The firm, however, declined to do so and only agreed to extend the validity of the revised offer upto June, 15, 1970. Therefore, on receipt of the fresh indent, the choice before the DGS&D was either to accept the revised offer of M/s. or to invite fresh tenders. It was known that there were other indigenous manufacturers who could also manufacture Bagasse fired boilers like M/s. West Bengal M/s. Yamuna Nagar and M/s.... As a matter of fact against the original tender enquiry issued on 1st April, 1969, M/s. ACC Vickers Babcock Ltd. had requested for extension of the tender opening date, to

enable them to submit their offer, vide their letter dated 30th April, 1969. The DGS&D had also extended tender opening date by a fortnight. Similarly, M/s. had also written a letter on 13th May, 1969 stating that the smallest of baggasse fired boiler they could offer was 35000 lbs. per hour or 16 tons per hour and wanted to know whether they could submit a quotation for beggasse fired boiler of this capacity. They said that they were unable to submit an offer to suit the exact requirements mentioned in the tender invitation. In the reply dated 20th May, 1969, the DGS&D advised them to quote for whatever suitable boiler they had as per requirements pointing out the deviations clearly from the tender enquiry specification in case they were interested. This firm again approached the DGS&D vide their letter dated 27th May, 1969 stating that as the due date for submission of tender was 28th May, 1969, they were unable to quote for the store in time and requesting for extension of the due date for a fortnight to enable them to submit their proposal by this period. However, this letter reached the DGS&D only after the opening of the tenders on 28th May, 1969. All this went to show that there were other firms who could also quote for this type of boiler and, therefore, the possibility of others showing interest if the demand was advertised afresh could not have been ruled out and it could indeed have resulted in a wider competition. It was also felt that as M/s. kept the revised offer with an increase of Rs. 25,000 available upto 15th June, 1970 and the DGS&D were allowing only one month for opening of fresh tenders, there was not much likelihood of their going back on their revised offer, and in any case, the DGS&D could not have reasonably forecast that this firm would escalate their price by such a steep amount of over Rs. 2 lakhs. On the contrary, it was felt that the fresh advertised enquiry might subdue the firm and that they might revert to their original price. On the whole it was not thought that there was any risk in going out on a fresh tender enquiry. During that time also there was no indication of any rising trend in prices. The firm themselves, when they were called upon for an explanation for such a steep rise in their quotation, stated as follows:—

“During the course of our discussions I pointed out to you

that our initial quotation, some two years ago, was based on supplying the boiler to you at absolute cost without overheads or any profit margin, but since then, as so much time has elapsed, we have accumulated a tremendous amount of business and due to the considerable load factor of our Contracts Department and Drawing Office, I am afraid that this condition no longer prevails. It was, therefore, necessary in our second quotation to you to quote for the supply of the boiler, purely and simply on present-day commercial rates; hence the increase in the price as indicated".

It may, therefore, be submitted that there was no rationale by which such an exorbitant increase in the price could have been anticipated by the DGS&D. Under the normal circumstances, Government would have had the benefit of either a more competitive quotation being received against the fresh tender enquiry or they could have availed of M/s. revised offer with a price increase of Rs. 25,000, whichever was better."

1.165. It is seen that the contract for the purchase of water tube boiler, which was first indented in March, 1969 was concluded by DGS&D in April 1971. Asked whether the work of the Sugar Institute suffered due to delay in getting the boiler, the Department of Food have in a note stated:

"The National Sugar Institute was established in 1936 by taking over the Sugar Section of the Harcourt Butler Technological Institute, Kanpur. It is the main function of the Institute to cater to the growing needs of the sugar industry by conducting research, imparting training to the students and rendering advisory services to the sugar factories. It had inherited from the Harcourt Butler Technological Institute a small 35-tonne factory which had become quite obsolete and worn out. So as to enable the Institute to give proper training to the students and to carry out trials of research projects, it had become necessary for the Institute to modernise the plant. On the advice of Expert Committee set up for the purpose it was decided to launch a new project envisaging the setting up of a new 100 tonne capacity experimental plant at the new site of the institute where it is shifted in 1963.

The Water—Tube—Boiler ordered through the D.G.S. & D. is

one of the main components of the plant and machinery required for the experimental sugar factory, the other main components being a milling plant and a boiling house equipment which are also being procured through the DGS&D. Pending the establishment of the new factory, the students of sugar technology and sugar engineering are being sent to the sugar factories to supplement their theoretical knowledge with practical training. As the training imparted in private factories cannot be complete substitute for practical guidance given by the Institute in an attached factory of its own; the students would not have the same liberty to handle the machinery in the private factories as would be the case in a pilot plant run by the Institute. While the setting up of the new factory was, therefore, regarded as an imperative need for the proper functioning of the Institute, the training of the students for the work of the Institute has not suffered merely because of the delay in the supply of the boiler."

1.166. The National Sugar Institute, Kanpur placed an indent on DGS&D for the procurement of one water tube boiler without making necessary arrangements for the funds required for the purchase. The indent placed sometime in April, 1969 had to be cancelled by DGS&D in November, 1969. Against the fresh indent received from the National Sugar Institute, Kanpur in May, 1970, the boiler was purchased at an extra expenditure of Rs. 2.65 lakhs. The Committee consider it essential that the circumstances leading to the placement of an indent without making provision for funds are looked into with a view to fixing responsibility.

1.167. From the information before them, the Committee find that the DGS&D failed to handle the deal in a businesslike manner. The fresh indent had been received by DGS&D on 5th May, 1970 and as a result of their negotiations with the firm on the basis of the earlier tenders the firm had on 18th May, 1970 agreed to keep open upto 15th June, 1970 its old offer with an increase of Rs. 25,000 over the price quoted earlier. Had this offer of the firm valid upto 15th June, 1970 been accepted the extra expenditure involved in the purchase of the boiler could have been avoided. It has been stated that as per the DGS&D manual the revised offer of the firm could have been accepted only on the consideration of want of adequate competition. Keeping in view the fact that even at the time of the initial tender out of the three offers only one was technically acceptable and in the retender only two firms sent offers, it would have been reasonable to

presume that there was not much competition. At the same time the prices had been showing a marked trend upwards from November, 1969. In the circumstances better offers could not have been expected. In any case the way this case has been handled proved to be costly to the public exchequer.

Purchase of netting mosquito round mesh

Audit Paragraph

1.168. The Director of Supplies (Textiles), Bombay, placed four contracts on firm 'A' for supply of netting mosquito round mesh khaki/white bleaches as per details given below:—

Sl. No.	No. and date of contract	Delivery period	Store/quantity ordered	Value (laks of Rs.)
1	443 dated 3rd May 1968		15th July 1968	Netting mosquito round mesh white bleaches : 49,824 metres. 1.0
2	483 dated 6th May 1968 18th May 1968	80,000 metres :	30th June 1968	Netting mosquito round mesh khaki : 4,00,000 metres. 9.0
		80,000 metres :	31st July 1968	
		80,000 metres :	31st August 1968	
		80,000 metres :	30th September 1968	
		80,000 metres :	31st October 1968	
	4,00,000 metres :			
3	484 dated 6th May 1968 18th May 1968	80,000 metres :	30th November 1968	Do. 9.00
		80,000 metres :	31st December 1968	
		80,000 metres :	31st January 1969	
		80,000 metres :	28th February 1969	
		80,000 metres :	31st March 1969	
	4,00,000 metres :			
4	485 dated 6th May 1968 18th May 1969	80,000 metres :	30th April 1969	Netting mosquito round mesh khaki : 4,00,000 metres. 9.00
		80,000 metres :	31st May 1969	
		80,000 metres :	30th June 1969	
		80,000 metres :	31st July 1969	
		80,000 metres :	31st August 1969	
	4,00,000 metres :			

1.169. On 30th May, 1968, the firm informed the Director of Supplies (Textiles), Bombay, that as its mill was closed temporarily, the deliveries against these contracts were likely to be delayed. As the firm failed to effect supplies by the stipulated date the Director of Supplies (Textiles) cancelled these contracts in December, 1968 and April—June, 1969 at the risk and expense of the firm and issued notices to the firm in July—September, 1969 for depositing Rs. 3,33,548 towards the extra cost of repurchase as indicated below:—

Sl. No.	No. and date of contract	Date of cancellation of contract	Date of repurchase	Extra cost of repurchase Rs.	Date of notice issued to firm 'A'
1	443 dated 3rd May 1968	21st December 1968	4th December 1968	6,682	31st July 1969
2	483 dated 18th May 1968	24th December 1968	4th December 1968	46,736	31st July 1969
3	484 dated 18th May 1968	31st December 1968 (2,25,000 metres) 11th April 1969 (1,75,000 metres)	4th December 1968 15th May 1969	94,399	31st July 1969
4	485 dated 20th May 1968	20th June 1969	11th May 1969	1,85,731 <hr/> 3,33,548	11th September 1969

In August, 1969 the firm informed the Department that it was not liable to pay the extra expenditure on the ground that its mill had closed "due to some sudden unavoidable circumstances beyond the control of the management and hence all our outstanding sales, commitments and contracts have been treated as cancelled."

1.170. The case was referred to the Ministry of Law which held that since risk purchase contracts in cases at serial numbers 1, 2 and 4 were placed even before the defaulted contracts were cancelled, Government would not be entitled to claim any risk purchase loss in these cases. In regard to the acceptance of tender at serial number 3, the Ministry of Law held that cancellation of the quantity which would have been due on 31st January, 1969 was not valid and that Government would be entitled to recover the risk purchase loss for 1,75,000 metres only cancelled against this contract.

1.171. On a further examination of the case in consultation with the Ministry of Law, the Director of Supplies (Textiles), Bombay,

issued a revised notice to firm 'A' on 17th April, 1971 for depositing Rs. 2,80,193 (Rs. 87,993 being extra cost in making risk purchase and Rs. 7,200 on account of general damages against contract at serial number 3 and Rs. 1,85,000 on account of general damages against contract at serial number 4). The notice was received back undelivered with the remarks that the addressee had left. The notice was sent again to the new address as well as to the old address of firm 'A' on 17th May, 1971. Both these letters have been acknowledged by the firm but no reply has been received from it. In May, 1971, the Ministry of Law stated that "the important thing is to initiate arbitration proceedings". Action to refer the case to arbitration is yet (December, 1971) to be taken.

1.172. In November, 1970 another acceptance of tender was placed on the firm for supply of 50,000 metres of Calico Cotton Khadi by 31st December, 1970. The firm returned the acceptance of tender in December, 1970 regretting its inability to manufacture the material as its mill had closed down. The acceptance of tender was therefore, cancelled in January, 1971 at the risk and cost of the firm. A fresh tender enquiry issued in February, 1971 for affecting risk purchase was allowed to lapse as the indenter withdrew his demand in March, 1971. The Ministry of Law to whom the matter was referred in May, 1971, stated that Government was entitled to claim general damages. The amount of general damages recoverable from the firm is yet to be assessed (December, 1971).

[Paragraph 64 of the Report of C. & A.G. (Civil) for the year 1970-71.]

1.173. The Committee desired to know whether the capacity of the firm had been checked before awarding 4 contracts to the firm in May, 1968 for Rs. 12.50 lakh metres of netting mosquito round mesh worth Rs. 28.10 lakhs. In a written note, the Ministry stated: "The Mill had been supplying Round Mesh Mosquito Netting to Defence Specifications since 1965. A list of contracts completed by Mills from 1965 is enclosed. As this Mill was a regular past supplier of this item, it was not considered necessary to check their capacity prior to the placement of the contracts."

1.174. From the list of contracts completed by the firm from April, 1965 to April, 1968 as furnished by the Ministry, it is observed that against 21 contracts placed on it, it had completed deliveries in time in respect of only 5 contracts.

1.175. The Committee enquired why the 3 earlier contracts mentioned against Serial Nos. 1, 2 and 4 in the Audit paragraph were not cancelled before effecting the risk purchase. The Ministry stated

that "When the Mill wrote on 30th May, 1968 against various contracts to the effect that their Mills were closed temporarily and that deliveries were likely to be delayed, it was decided by the DGS&D (since the supplies against the contracts had become uncertain and the Defence requirements were urgent) to issue a fresh advertised tender enquiry for 12,00,000 metres, with a view to taking risk purchase action against the Mill in respect of all the contracts where supplies were outstanding. This enquiry was issued on 9th August, 1968. Offers received against this tender enquiry were due to expire on 4th December, 1968. As the prospect of supply in regard to contracts placed on the Mill had not improved by this date, it was decided to avail of these offers in regard to quantities outstanding against contracts at Serial Nos. 1 and 2, where the delivery periods had already expired. Advance contracts were accordingly placed on 4th December, 1968 without however first cancelling the contracts placed on the Mill. Cancellation of the contracts placed on the Mill was actually made on 21st December, 1968 and 24th December, 1968 before the issue of the formal contracts on 31st December, 1968. The decision to avail of the offers expiring on 4th December, 1968 was taken only on that date, and therefore, the Advance Acceptances of Tender had to be issued the same day."

1.176. In reply to a question as to why the contracts for the quantity which had not become due for supply were cancelled, the Department of Supply have stated: "The firm informed on 30th May, 1968 that their mills were temporarily closed and that deliveries were likely to be delayed. As there were no prospects of supply even by 30th November, 1968 when the first instalment was due, it was decided in respect of the contract at Serial No. 3 to cancel the whole contract even in regard to quantities where the delivery period was still valid as waiting for the delivery period to expiry would have meant further delay in meeting the urgent defence requirements and as contracts on alternative sources could only be placed after cancelling the contract on the Mill.

1.177. As regards contract at Serial No. 4 the DGS&D issued a notice to the firm on 8th April, 1969 stating that in case they failed to supply the first instalment by the due date of 30th April, 1969. the DGS&D would be within its rights to cancel the contract at their risk and expense. In reply, the firm wrote on 14th May, 1969 that they did not hope to offer any quantity against the order. As the firm had clearly indicated that there were no prospects of supply against the contract the entire quantity on order was cancelled on 20th September, 1969. The cancellation of the order was also subsequently upheld by the Ministry of Law, taking into consideration the firm's letter of 14th May, 1969."

1.178. The Committee then enquired whether the performance of the firm against the earlier 4 contracts placed on it in May, 1968 were taken into account while placing fresh contract in November, 1970 for supply of 50 thousand metres of Calico cotton khadi. The Ministry stated that "the performance of the Mill against earlier contracts was considered by the DGS&D before placing the fresh contract for Calico Khaki in November, 1970. Calico Khaki is a different item from mosquito netting and the performance of the firm against all contracts placed on them for this item (Calico Khaki) prior to May, 1968 had been satisfactory. The Mills had started partial activities in February, 1970 and had quoted for the supply of this item against the tender opened on 30th September, 1970. The Inspecting Officer had also indicated in his letter of 6th November, 1970 that the Mills were closed only in so far as manufacturing of Netting Mosquito Round Mesh was concerned."

1.179. To a question whether Government were not aware that the firm's mill had closed down, the Ministry stated that "the DGS&D were aware that the Mills had closed down in May, 1968. However, partial activities in the Mills had been resumed in February, 1970. The firm had submitted a quotation for the supply of Calico Khaki in September, 1970, and the report of the Inspecting Officer dated 6th November, 1970 had indicated that the Mills (except for the Net- were aware that the Mills had closed down in May, 1968. However, again closed on 13th November, 1970. This fact came to light only through the firm's letter of 31st December, 1970, where they indicated their inability to undertake the supply of the item."

1.180. On the advise of the Ministry of Law, on the 4 contracts placed on the firm in May, 1968, the D.G.S. & D. have initiated arbitration proceedings and an arbitrator has been appointed on 28th June, 1972. As regards the contract placed on the firm for Calico cotton Khadi in November, 1970, the amount of general damages due from the firm against this contract has been assessed at Rs. 9,215 and a demand notice on the Mill for this amount has been served on 4th August, 1972.

1.181. Between 3rd May, 1968 to 18th May, 1968 the Director of Supplies (Textilse), Bombay placed four contracts valued at Rs. 28.10 lakhs on firm 'A' for supply of 12,49,824 metres of netting mosquito round mesh khaki|white. As per the contracts deliveries were to be completed by the firm in instalments between June, 1968 and 31st August, 1969. On the 30th May, 1968 i.e., just after 12 days after the execution of the four contracts, the firm informed the

Director of Supplies (Textiles), Bombay that their mill was closed temporarily, the deliveries against these contracts were likely to be delayed. However, as the firm failed to effect the supplies by the stipulated date, the Director of Supplies (Textiles) cancelled these contracts in December, 1968 and April—June, 1969 at the risk and expense of the firm and issued notices to the firm in July—September, 1969 for depositing Rs. 3,33,548 towards the extra cost of re-purchase. This was contested by the firm. The Ministry of Law to whom the matter was referred for advice held that since in 3 out of 4 cases the risk purchase contracts had been placed even before the defaulted contracts were cancelled, Government was not entitled to claim any risk purchase loss in these cases. In the fourth case the Ministry of Law expressed the opinion that out of risk purchase of 4,00,000 metres the Government was entitled to recover the loss on 1,75,000 metres only. The omission to cancel the contracts placed on the firm before new contracts for risk purchase were placed is a serious lapse for which the Committee desire that responsibility should be fixed.

1.182. The Committee were informed that on the advice of the Ministry of Law D.G.S. & D. have initiated arbitration proceedings in respect of all the 4 contracts entered into with the firm. The Committee would like that the outcome of the arbitration proceedings be intimated to them in due course.

1.183. From the information made available to the Committee it is seen that in 21 contracts placed on the firm between April, 1965 and April, 1968 for the supply of mosquito netting the firm had completed deliveries in time only in 5 cases. In the light of this background the Committee fail to understand why such huge orders worth more than Rs. 28 lakh were placed on this firm. Further, even after terminating all the contracts with the firm in 1968-69 because of the firm's inability to cope with the requirements of DGS&D the firm was again selected for award of another contract in November, 1970. This had also to be cancelled subsequently at the risk and cost of the firm. The Committee desire that the circumstances leading to the award of 4 contracts to the firm in 1968 and another contract in 1970 may be gone into to see how far was it justifiable to have dealings with a firm whose past record was not at all satisfactory.

Appendix I

(See para 1.13)

Note on the action taken by the Ministries of Supply and Defence in regard to the proposal regarding maintenance of Vocab-cum-Programme Book by the Ministry of Defence

The question of preparation of a Vocab-cum-Programme Book in respect of Defence stores was first discussed in the meeting of the Coordination Committee held in the Ministry of Defence on 30-5-1970. In the meeting, the Director General (S. & D.) raised the point whether it would be possible for the Defence authorities to prepare a reference Book, similar to that prepared for the Railways. Additional Secretary (Defence) requested the D. G. S. & D., to make available a copy of the Railway Reference Book to enable them to examine the point. A copy of the Railway Vocab-cum-Programme Book was, thereafter, handed over to the Director of Ordnance Services, Ministry of Defence by the D. G. S. & D., in the Review Meeting held on 17-9-1970.

On 23-9-1970, the Ministry of Defence was informed that a meeting of the Coordination Committee was proposed to be held in the Department of Supply, that Ministry was requested to suggest any item which they would like to be included in the discussion. In reply to this letter, the Ministry of Defence sent a list of 19 items for discussion on 14-10-1970. A brief on the feasibility of preparing a Reference Book for Defence items was one of the items included in this list. The Ministry of Defence had indicated in the brief that the matter had been thoroughly examined by them and that they had come to the conclusion that much advantage was not likely to result by the preparation of such a book for Defence stores. The D. G. S. & D., who were requested to comment on the brief stated as follows:—

“The question of preparation of a Reference Book in respect of Defence stores was discussed in the Coordination Committee meeting held in the Ministry of Defence on 30th May, 1970. It was decided in the said meeting that the MGO Branch of the Ministry of Defence would themselves undertake this work.

Theoretically, the compilation of the Vocab, in question is ideal for economic purchase in the sense that it will afford advance planning as is done in the case of Railway Programme indents. However, the success of the vocab would entirely depend upon to what extent the Defence Departments can plan their requirements well in advance and how many items of recurring demands can be introduced in such a Vocab."

The Comments made by the DGS&D were made known to the Ministry of Defence, when the brief for the meeting was circulated to them under the Department of Supply's d.o., dated 22-12-1970. The meeting of the Coordination Committee was, thereafter, held in the Department of Supply on 23-1-1971. Owing to lack of time, this item could not, however, be taken up for discussion in the meeting. The minutes of the meeting were circulated to all concerned on 26-2-1971.

As the matter was not discussed in the meeting on 23-1-1971, it would, in the normal course, have been discussed in any subsequent meeting either in the D. G. S. & D., the Department of Supply or the Ministry of Defence. However, from March 1971 onwards, owing to the sudden developments in Bangla Desh and the subsequent declaration of the emergency, a tremendous load of work was suddenly thrust upon the D. G. S. & D., and the Department of Supply. During the months following March 1971, the D.G.S. & D. was called upon to make unprecedented purchases of a host of items at short notice required for the rehabilitation of the refugees and for ensuring proper defence preparedness. During these months, the Ministry of Defence was also similarly preoccupied. For obvious reasons, policy matters not directly connected with the current emergency were generally allowed to remain in the background at this time. The feasibility of preparing the Reference Book was, therefore, not actively pursued by the Department of Supply or the Ministry of Defence during the emergency period, though informal references in regard to the necessity for such a book seems to have been made in the various meetings held in the D. G. S. & D. to discuss the supply of critical items to the Defence Forces etc. during this period.

On 13-7-1971 the Ministry of Defence had taken a decision in principle that orders on the trade should be placed on a long term basis of 4 to 5 years. Consequent to the easing of the situation after the war with Pakistan, this matter was further discussed in the Ministry of Defence on 14-4-1972. In this meeting, it was decided that the Director of Ordnance Services would make available to

the D. G. S. & D., every year a forecast of their requirements for a minimum period of four years on a realistic basis. The forecast was to be followed by firm indents as soon as possible. On the basis of this decision, indents for some of the important Defence requirements are now being sent by the Ministry of Defence to the D. G. S. & D. for supply on long-term basis of two to three years instead of one year.

The chief merit of a Vocab Book is that it enables the DGS&D to do advance planning for the procurement of an item, to meet the total requirements of the indenter, spread over a certain period. With the decision taken by the Ministry of Defence on 14-4-1972 to project their requirements of recurring items to the D. G. S. & D. on a four-year basis, the purpose of having a Reference Book for Defence stores was, in fact, achieved to some extent. However, the question of preparation of a formal book in this regard was again pursued with that Ministry on 18-8-1972. In their reply of 24-8-1972, the Ministry of Defence drew attention to the very large number of items being purchased for the Defence services and the continuous revision of specifications and drawings in regard to these items which rendered the preparation and maintenance of such a book difficult and impracticable. The matter was further discussed in a meeting in the Department on 11-10-1972, where it was agreed that a beginning in regard to the preparation of the book could be made by the Ministry of Defence by selecting a few items, where advance planning and indenting was possible. A written confirmation to this effect was received from the Ministry of Defence on 30-10-1972. The matter is at present being further processed by the Ministry of Defence.

APPENDIX II

(See para 1.79)

Statement showing the quantities of Antimony ore imported, metal produced and closing stock both of ore and metal for each quarter during the years 1969 and 1970

(Quantity in tonnes)

	Antimony Ore				Antimony metal		
	Opening Balance	Qty. of ore imported	Qty. of ore used	Closing Balance	Opening Balance	Produc- tion	Closing Balance
Jan.-March, 69	2.362	645.328	274.919	372.771	9.277	140.000	6.127
April-June, 69	372.771	154.206	399.135	127.842	6.127	235.000	53.507
July-Sep. 69	127.842	311.526	231.541	207.827	53.507	122.000	28.946
Oct.-Dec. 69	207.827	425.505	226.925	406.407	28.946	140.000	46.983
Jan-March. 70	406.407	..	250.468	155.939	46.983	117.000	69.252
April-June. 70.	155.939	73.847	215.269	14.517	69.252	145.000	51.271
July-Sep. 70	14.517	366.483	209.409	171.591	51.271	121.000	65.051
Oct-Dec. 70	171.591	340.098	277.846	233.843	65.051	143.000	125.076
		2316.993	2085.512			1163.000	

APPENDIX III

(See para 1.79)

*Statement showing fair selling price of antimony fixed during the period
January, 1968 to June 1971*

Period	Rate of Antimony per tonne
1-1-68 to 30-6-1968	Rs. 9392.00
1-7-68 to 31-12-1968	9392.00
1-1-69 to 30-6-1969	8828.00
1-7-69 to 31-12-1969	10207.00
1-1-70 to 30-6-1970	9411.00
1-7-70 to 30-9-1970	10560.00
1-10-70 to 31-12-1970	464632.00
1-1-71 to 31-3-1971	47778.00
1-4-71 to 30-6-1971	47252.00

APPENDIX IV

Summary of main conclusions | recommendations

S. No.	Para No.	Ministry Deptt.	Recommendation
(1)	(2)	(3)	(4)
1	1.30	<u>Defence</u> DGS&D	<p>Vocab-cum-programme books which enable the indenting Ministries to make a definite forecast of their requirements of various stores for two or three years are being maintained by the Ministries like Railways and Posts and Telegraphs. The maintenance of such books also enables the DGS&D to plan procurement of vital stores on a more rational basis by entering into running contracts with the suppliers instead of the rate contracts which are more expensive. The Committee regret to observe that the Ministry of Defence have not been maintaining vocab-cum-programme books with the result that the procurement of even the vital stores which are in regular demand of Defence Services was not being arranged on any programmed basis. The Committee were given to understand that in respect of certain items such as clothing, tool and hardwares the Ministry of Defence intimated their requirements to DGS&D 21 months in advance. From the information made available by the DGS&D it is seen that during the period 1968 to 1972 in respect of hostery items viz. stocks, woollen jerseys etc. in only one case a lead of 21 months was allowed to DGS&D. In other cases the lead time varied from a few days to 16 months. This only under-</p>

(1) (2) (3)

(4)

scores the need for better planning for the purchase of Defence stores.

2 1'31 Defence

The Committee were informed that a decision had been taken as far back as in May 1970 by the Ministry of Defence to examine the feasibility of preparation of vocab-cum-programme books. It took the DGS&D more than two years to persuade the Ministry of Defence to be convinced about the need for the preparation and maintenance of such books. The Ministry of Defence have now agreed to prepare vocab-cum-programme book in respect of some selected items. The Committee need hardly emphasise that the proposals aiming at better planning and economy should be examined expeditiously.

3 1'32 DGS&D

The Audit paragraph brings out the fact clearly that as the procurement of vests woollen white for Defence Services is not being programmed on a systematic basis, only a small number out of the total requirements is covered against the rate contracts entered into by DGS&D from time to time and the balance quantity has to be procured by placement of tenders. The procurement by acceptance of tenders involves assistance to the manufacturers for procurement of wool tops on replenishment basis. However, since the wool tops are to be imported with only limited foreign exchange allocated by the Ministry of Foreign Trade, acceptance of contracts

on assistance basis becomes difficult. Therefore, in cases of urgent *ad hoc* indents from the Ministry of Defence, the DGS&D had to resort to purchases "at without assistance rates" which are inevitably high. The Committee desire that the Ministry of Defence should, in consultation with the DGS&D, make an exhaustive review of the whole system of the procurement of the vital stores and lay down procedures which are more conducive to economy.

4 1.33 Foreign Trade

Defence

The Committee note that against an estimated requirements of about Rs 2.5 crores worth of foreign exchange for import of wool tops for defence requirements, foreign exchange of Rs. 1 crore only has been allocated. The Committee desire that the feasibility of setting aside a portion of the total production of wool tops in the country for meeting the urgent requirements of the defence forces may be examined.

5 1.55 DGS&D

According to the advance acceptance of tender placed on the manufacturer on 6th February, 1971, 199 Ambassador cars were to be tendered for inspection by 10th April, 1971 to meet the defence requirements. However, only 80 cars were tendered for inspection by the manufacturer out of which 44 cars were accepted. The extra expenditure on account of purchase of the balance of 155 cars at the higher price consequent on the Supreme Court order dated 16th April, 1971 was Rs. 2.95 lakhs. As the firm clearly failed to perform the contract and deliver the vehicles within the stipulated dates of delivery ending with 10-4-1971, action should have been

(1) (2) (3)

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taken to recover general damages. Instead the purchaser is stated to have acquiesced in the continuance of the contract by issuing a letter of extension unilaterally extending the date of delivery till 31st May, 1971. The Committee desire that responsibility should be fixed for this lapse.

6 1.55 DGS&D
Defence
The Committee find that although the number of cars offered for inspection as per the firm's letter was 87, only 80 cars were actually tendered for inspection. Further, 36 cars rejected on inspection were not retendered by the firm after rectification of defects pointed out by the Inspector. They were disposed of in the open market. The Committee would like to know whether the failure of the firm in this regard was examined.

7 1.57 DGS&D
The Committee are not happy over the high rate of rejections (45 per cent). As the firm was presumably aware of the impending revision of the price of car deliberate manipulation by them to keep the number of accepted cars to the minimum cannot be ruled out. It is unfortunate that there was no commitment on the part of the firm to deliver all the cars by the stipulated date in good condition. The lacuna in the contract was that the term 'delivery' was defined as 'tendered for inspection'. The assumption that "when stores are put up for inspection they will be of acceptable quality in terms of the contract" did not prove to be correct. The

Committee do not appreciate the helplessness of the Government in persuading the firm to accept a firm delivery clause. The Committee suggest that Government should examine this question in all its aspects to see how their interests could be safeguarded although Ambassador car is a proprietary item.

Under the Car Distribution and Control Order, Government has powers to reserve quota for specified uses. In pursuance of this there is a Central Government quota which is used for allocation of cars to Government servants. But so far as purchase for departmental use is concerned, there is at the moment no special quota. In view of what has happened in this case, the Committee desire Government to examine the feasibility of having a special quota for departmental use.

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8 1.58

Industrial Development

The Committee are unhappy to note that after placement of the indent with the DGS&D in April, 1968 the Defence Department changed the specifications and drawings for the trailers thrice between May, 1968 and January, 1969. As a result the tenders invited in May, 1968 had to be cancelled. In the tenders invited in December, 1968, the specifications and drawings were also changed twice before the finalisation of the contract in March, 1969. The changes in the specifications not only contributed to the delay in the purchase of trailers but also resulted in avoidable loss as the extra expenditure incurred on risk purchase could not be recovered from the defaulting firm due to trailers repurchased being of different specifications. The Committee need hardly stress that

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indents should be placed with DGS&D only after the specifications of requisite stores have been finally decided upon. They trust that the present instance will not be allowed to be repeated.

The Committee also feel that the placement of a big order valued at Rs. 39.59 lakhs on a new firm which had no previous experience of manufacturing trailers was not at all justified. It is pertinent to note in this connection that the order on this firm was placed 'in an effort to develop new sources of supply'. In the opinion of the Committee the placement of an order of the magnitude of 865 trailers out of a total of 1045 was highly improper and calls for investigation.

It is seen that the inspection of the prototype submitted by the firm on the 23rd August, 1969 was completed by the Defence Inspectorate on 7-11-1969 and thereafter due to lay off in the firm's factory from 19-12 1969 the firm did not re-offer for inspection the prototype trailer. In view of the closure of the factory, the DGS&D should have taken necessary steps to safeguard their interests by cancelling the contract well in time. The delay in taking timely action has resulted in extra expenditure of Rs. 6.32 lakhs which the Committee cannot but deplore.

The Committee take a serious view of the mistake in indicating the specification of antimony in the indent by the Ammunition

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DGS&D

Factory, Kirkee and the delay in appropriately amending the contract for the supply of the metal in the Office of the DGS&D. These cost the exchequer additional expenditure of Rs 12.05 lakhs. The Committee desire that responsibility should be fixed for the mistake that occurred in the Ammunition Factory. The delay in DGS&D's office at each stage should also be investigated.

It is surprising that at the time of entering into the contract for the purchase of antimony it was not noticed that the specification given was applicable to Aluminium. It was not for the first time that the DGS&D entered into a contract for the supply of Antimony. Further regrettably the Inspector also did not attempt to correct the mistake. These lapses appear to the Committee to be of sufficiently grave nature and call for detailed investigation.

Antimony, an essential raw material for Defence Production, storage batteries and vital alloy metals, is produced by a single firm in the country. The fair selling price of the metal is fixed by the Department of Mines and Metals. The selling price which ranged from Rs. 8,828 per tonne to Rs. 10,560 per tonne during the period 1-1-1968 to 30-9-1970, jumped to Rs. 46,532 per tonne w.e.f. 1st October, 1970. The supplies against the DGS&D's contracts were erratic, the figures being 218 tonnes in 1968, 57 tonnes in 1969, 64 tonnes in 1970 and 406 tonnes in 1971. The annual production of the metal by the firm ranged from 568 tonnes to 731 tonnes during the period 1968-69 to 1971-72. The obvious inference is that when the price

13 1.114

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14 1.115

Deptt. of Mines
and Metals

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15	I. 116	Industrial Development	<p>fixed is low, the firm finds it profitable to divert the supplies to the open market. The Committee understand that there is no control over distribution of the metal. They desire that the feasibility of imposing some sort of control should be considered in view of the vital Government needs.</p> <p>The Committee understand that the firm is now getting imported antimony through the Minerals and Metals Trading Corporation. They desire that the Ministry of Industrial Development should explore other sources for the manufacture of the metal so as to end the present monopoly.</p>
16	I. 152	DGS&D	<p>The Committee note that an order for supply of 7,000 tents valued at Rs. 31.3 lakhs was placed on firm 'A' of Delhi in June, 1967 solely on the ground that the rate offered by the firm was the lowest. The past performance of the firm was not at all taken into consideration. The firm which was not registered with the Director General, Supplies and Disposals had failed to make supplies against three contracts placed by the Director of Supplies (Textiles) Bombay in August-September, 1966 and as a result the contracts involving Rs. 19 lakhs had to be cancelled. The firm's failure to keep up its contractual obligations in the past was not only overlooked at the time of awarding a new contract worth more than Rs. 31 lakhs but was in fact considered by DGS&D as a factor in favour of the</p>

firm. This was admittedly a wrong decision which the Committee desire, should be gone into with a view to fixing responsibility.

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DGS&D

The Committee further note that as a result of the firm's failure to make supplies against the fresh contract involving more than Rs. 31 lakhs, the DGS&D placed a contract for risk purchase on firm 'B'. This firm was none other than the firm 'A' under a different name. The fact that firm 'B' was the same as firm 'A' with only a difference in name was known to DGS&D but they nevertheless placed the contract with firm 'B' because the rates quoted by them were the lowest and a strict interpretation of law on the subject enjoined that only the lowest offer was to be accepted. According to the representative of the Ministry of Law in a risk purchase tender the lowest offer could be ignored if it was established that the firm making the lowest offer had no capacity to supply. The Committee are of the opinion that keeping in view their past performance it could be safely presumed that the firm lacked adequate capacity. They, therefore, feel that instead of taking a firm decision on this aspect, the easier course of taking shelter behind the letter of the law was resorted to. In fact the Committee were informed that in the present case, the advice of the Law Ministry would have been that it should have been possible to ignore the offer of firm B. The Committee desire that a thorough investigation should be made with a view to fixing responsibility as also for laying down proper guidelines for the future.

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I.154

DGS&D

The Committee find that orders issued by the DGS&D in 1969 debarring the firm from future contracts were not communicated to the National Small Industries Corporation with whom the firm was registered. The matter came to the notice of NSIC only in 1972 through the Audit Report. This is a serious lapse for which the responsibility should be fixed.

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I.166

Food and Agriculture

The National Sugar Institute, Kanpur placed an indent on DGS&D for the procurement of one water tube boiler without making necessary arrangements for the funds required for the purchase. The indent placed sometime in April, 1969 had to be cancelled by DGS&D in November, 1969. Against the fresh indent received from the National Sugar Institute, Kanpur in May, 1970, the boiler was purchased at an extra expenditure of Rs. 2.65 lakhs. The Committee consider it essential that the circumstances leading to the placement of an indent without making provision for funds are looked into with a view to fixing responsibility.

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I.167

DGS&D

From the information before them, the Committee find that the DGS&D failed to handle the deal in a businesslike manner. The fresh indent had been received by DGS&D on 5th May, 1970 and as a result of their negotiations with the firm on the basis of the

earlier tenders the firm Lad on 18th May, 1970 agreed to keep open upto 15th June, 1970 its old offer with an increase of Rs. 25,000 over the price quoted earlier. Had this offer of the firm valid upto 15th June, 1970 been accepted the extra expenditure involved in the purchase of the boiler could have been avoided. It has been stated that as per the DGS&D manual the revised offer of the firm could have been accepted only on the consideration of want of adequate competition. Keeping in view the fact the even at the time of the initial tender out of the three offers only one was technically acceptable and in the retender only two firms sent offers it would have been reasonable to presume that there was not much competition. At the same time the prices had been showing a marked trend upwards from November, 1969. In the circumstances better offers could not have been expected. In any case the way this case has been handled proved to be costly to the public exchequer.

DGS&D

Between 3rd May, 1968 to 18th May, 1968 the Director of Supplies (Textiles) Bombay placed four contracts valued at Rs. 28.10 lakhs on firm 'A' for supply of 12,49,824 meters of netting mosquito round mesh Khaki|white. As per the contracts deliveries were to be completed by the firm in instalments between June, 1968 and 31st August, 1969. On the 30th May, 1968 i.e. just after 12 days after the execution of the four contracts, the firm informed the Director of Supplies (Textiles) Bombay that as their mill was closed temporarily, the deliveries against these contracts were likely to be delayed. How-

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ever, as the firm failed to effect the supplies by the stipulated date, the Director of Supplies (Textiles) cancelled these contracts in December, 1968 and April-June, 1969 at the risk and expense of the firm and issued notices to the firm in July-September, 1969 for depositing Rs. 3,33,546 towards the extra cost of repurchase. This was contested by the firm. The Ministry of Law to whom the matter was referred for advice held that since in 3 out of 4 cases the risk purchase contracts had been placed even before the defaulted contracts were cancelled, Government was not entitled to claim any risk purchase loss in these cases. In the fourth case the Ministry of Law expressed the opinion that out of risk purchase of 4,00,000 metres the Government was entitled to recover the loss on 1,75,000 metres only. The omission to cancel the contracts placed on the firm before new contracts for risk purchase were placed is a serious lapse for which the Committee desire that responsibility should be fixed.

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I. 182

DGS&D

The Committee were informed that on the advice of the Ministry of Law DGS&D have initiated arbitration proceedings in respect of all the 4 contracts entered into with the firm. The Committee would like that the outcome of the arbitration proceedings be intimated to them in due course.

From the information made available to the Committee it is seen that in 21 contracts placed on the firm between April, 1965 and April, 1968 for the supply of mosquito netting the firm had completed deliveries in time only in 5 cases. In the light of this background the Committee fail to understand why such huge orders worth more than Rs. 28 lakhs were placed on this firm. Further, even after terminating all the contracts with the firm in 1968-69 because of the firm's inability to cope with the requirements of DGS&D, the firm was again selected for award of another contract in November, 1970. This had also to be cancelled subsequently at the risk and cost of the firm. The Committee desire that the circumstances leading to the award of 4 contracts to the firm in 1968 and another contract in 1970 may be gone into to see how far was it justifiable to have dealings with a firm whose past record was not at all satisfactory.
