

**PUBLIC ACCOUNTS COMMITTEE
(1969-70)**

(FOURTH LOK SABHA)

HUNDRED AND FIFTH REPORT

**[Audit Report (Civil) 1969, relating to the Ministry
of Supply]**



**LOK SABHA SECRETARIAT
NEW DELHI**

March, 1970/Chaitra, 1892 (Saka)

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- 5-8-1969 (AN)
- 6-8-1969 (AN)
- 7-8-1969 (AN)
- 13-3-1970 (AN)

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(1969-70)

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Shri A. L. Rai—*Deputy Secretary*

Shri K. Seshadri—*Under Secretary*

INTRODUCTION

1. The Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Hundred and Fifth Report (Fourth Lok Sabha) on Appropriation Accounts (Civil), 1967-68 and Audit Report (Civil), 1969 relating to the Ministry of Supply.

2. The Audit Report (Civil), 1969 was laid on the Table of the House on 18th April, 1969. The Committee examined paragraphs relating to the Ministry of Supply at their sittings held on the 5th, 6th and 7th August, 1969 (AN). The Committee considered and finalised this Report at their sitting held on the 13th March, 1970 (AN). Minutes of these sittings form part II* of the Report.

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

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

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

NEW DELHI;

March 25, 1970

Chaitra 4, 1892 (Saka).

ATAL BIHARI VAJPAYEE,

Chairman,

Public Accounts Committee.

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

MINISTRY OF SUPPLY

DIRECTORATE GENERAL OF SUPPLIES AND DISPOSALS

Audit Paragraph

Purchase of "joint bonds"

Against a contract for purchase of 46,000 "joint bonds" placed on a firm (a small scale unit) on 14th January, 1964 (to cover an indent received from the Central Railway in September 1963), failure to make repurchase within the prescribed period of six months after the firm failed to complete the supplies resulted in extra expenditure of Rs. 2.75 lakhs.

1.2. The contract stipulated the firm price of Rs. 15.31 per unit, free delivery at the consignees' premises in Bombay, and the supplies were to be completed by 15th July, 1964. However, the firm could supply only 19,500 joint bonds despite repeated extensions of delivery period upto 15th September, 1965, and failed to supply the balance on grounds of non-availability of raw material. Thereupon, a notice was served on the firm on 9th November, 1966 to complete the supply by 31st December, 1966, failing which the firm was told, the contract would be cancelled at its risk and expense. In the meantime, a risk purchase advertised tender enquiry was issued on 5th February, 1966; and, among the tenders received, an offer from the same firm was the lowest considered acceptable; the price quoted was the same, viz., Rs. 15.31 per unit, but it was subject to Government assistance for procurement of raw material, viz., electrolytic copper wire bars at controlled rates.

1.3. The tenders received were, however, scrapped and it was decided to retain the existing contract with the firm as it "happened to be the lowest and there was no other suitable offer". Assistance was also given to the firm for procurement of 34.782 tonnes of electrolytic copper wire bars through the Minerals and Metals Trading Corporation.

1.4. After obtaining delivery of the raw material on 4th March, 1967, the firm approached the Director General, Supplies and Disposals (6th March, 1967) for increase in the contract price of Rs. 19.40 per unit on the ground that it had paid a high price for the raw material while this request was turned down by the Director General, Supplies and Disposals, a *suo moto* extension of two years

in the delivery period upto 15th September, 1967, was granted to the firm on 15th March, 1967. The firm did not make any further supplies; and finally on 29th September, 1967, the contract was cancelled at the firm's risk and expense. Subsequently, on the basis of fresh tenders invited on 3rd October, 1967, on 29th February, 1968 a risk purchase order for 17,123 units (on the basis of the latest requirements of the indenter) was placed on the same firm at Rs. 20.90 per unit.

1.5. During the intervening period, to cover the shortfall in supplies the Director General, Supplies and Disposals, placed on the basis of tenders, the following two other contracts on the same firm for joint bonds:—

(a) 2,207 numbers at Rs. 36.65 per unit on 7th October, 1966.

(b) 6,830 numbers at Rs. 34.65 per unit on 22nd April, 1967.

1.6. The extra cost in repurchase could not be recovered from the firm as, according to a legal advice obtained from the Ministry of Law in November, 1967, the repurchase had been made more than six months after expiry of the extended delivery period (15th September, 1965).

1.7. No claim for recovery of "general damages" (Rs. 1.95 lakhs) on the basis of the prevailing market rates at the time of default has been made on the firm so far (November 1968), nor has any action (as suggested by the Ministry in February, 1968) been taken to fix responsibility for the failure to make repurchase within the prescribed period.

[Paragraph 91, Audit Report (Civil), 1969.]

1.8. The Committee asked whether the firm with whom Government entered into contract was registered with the Director General, Supplies and Disposal and had furnished the surety. The Secretary, Department of Supply stated: "Whenever a firm is registered with the Director General, Supplies and Disposals, it is not necessary for us to ask the firm to deposit a security. At the time of registration, all possible precautions are taken such as obtaining of banker's certificate, clearance from the Income-tax etc. After taking into account all these things, the firm is registered. In the case of small-scale industries, it is only after the certificate from the N.S.I.C. is obtained in regard to the competence of the firm for manufacturing a particular item, that it is registered with the Director General, Supplies and Disposals."

1.9. Pointing out that while the delivery period was extended time and again till 15th September, 1965 the risk purchase notice was served on the firm only on 9th November, 1966, i.e., after nearly 14 months, the Committee asked why there was such an abnormal delay. The Joint Secretary, Department of Supply stated that it became clear in March, 1966 "that we would have to carry on with this firm whether we liked it or not, because of the then circumstances. That decision was taken in March, 1966 after the stand-by tender had been called and opened. It was then that the decision was taken that though the contract did not really provide for assistance, yet in the circumstances in which we were then placed, we would have to give ex-gratia assistance; the entire period was taken up in correspondence with various persons like the Controller of Scarce Raw Materials, asking him whether he would release the copper to the firm to the Maharashtra Development Commissioner, the Development Commissioner, Small Scale Industries Sector, the National Small Industries Corporation and others. It was when we found that this was not happening and the indenter was pressing his demand that the notice to the firm was issued on 9th November, 1966."

1.10. The Committee asked why, after risk purchase tenders were issued in February, 1966, it was decided to scrap the tender enquiry and to retain the existing contract with this firm. The witness stated that an unforeseen development took place with regard to copper which was the raw material which the firm required for the manufacture of the contracted stores. The Scarce Materials Control Order came into force on 15th September, 1965 as there was an erratic fluctuation of the prices of copper due to its scarcity. The witness further stated that this order was promulgated to control its use and fix the price "The tender was called and opened during the period of control. Hence, every firm which tendered automatically asked for assistance."

1.11. The Committee drew the attention of the witness to the fact that raw material (copper) was ultimately provided to the firm by Government. Notwithstanding this the firm failed to effect the supplies. The Department of Supply have furnished copies of correspondence exchanged with the firm in regard to provision of raw material assistance from which the following position emerges. Between November, 1964 and February, 1967 the firm approached the Government from time to time for assistance stating that there was acute shortage of raw material and continuous increase in price thereof. The firm requested that Government should assist them in the matter to facilitate completion of supplies. The firm also pointed out in the course of correspondence that against "various

other orders" for these stores from Railways, the Railway authorities had been recommending their import licence applications for copper wire bars. The Director General, Supplies and Disposals did not however agree to the request till in February, 1967 he informed the firm that the Minerals and Metals Trading Corporation had been asked to release 34.782 (metric) tonnes of copper on payment and directing the party to take delivery thereof "without prejudice to the terms and conditions" of the contract. The Committee enquired whether, apart from 34.782 tonnes any other releases were made. They were informed that the Minerals and Metals Trading Corporation had earlier in March, 1966 released 8.34 metric tons of electrolytic copper wire bars to the firm.

1.12. Though the supply of copper was without prejudice to the terms and conditions of the contract, the Committee pointed out no further supplies were made by the firm against this contract. On the other hand, the firm made supplies against the two other contracts (dated October, 1966 and April, 1967) placed with them at higher rates to make up for the shortfall in supplies arising out of default of the firm in respect of this contract. The Committee enquired whether the inference in the circumstances would not be that the firm used raw material given to them for supplies (at Rs. 19.40 per unit) against the original contract to make supplies at the rates of Rs. 36.65 per unit and Rs. 34.65 per unit agreed to in the contracts dated October, 1966 and April, 1967 respectively. The Secretary, Department of Supplies stated that the matter would be looked into. In a note on this point, the Committee have been apprised of the following position:

1.13. "34.782 tonnes of copper was released to the firm. They could have utilised about 22.474 tonnes for the supply of 17,123 bonds (against risk purchase contract placed with them in February, 1968), leaving a balance of 12.308 tonnes unutilised. During discussion in the office of the Director of Supplies and Disposals, Bombay, the firm's representative admitted that the balance copper was still lying with them. Apparently, therefore, the firm did not utilise this copper against the contracts dated the 7th October, 1966 and the 2nd April, 1967, the question as to what should be done about this balance copper is being examined."

1.14. The Committee enquired how Government satisfied themselves about the reasonableness of prices accepted in the contracts placed in October, 1966 and April, 1967. In a note the Department of Supply have stated that in regard to the contract dated October, 1966, "there was no option but to place a contract at this price" as

“this was the lowest technically acceptable offer..... It will not be out of place to mention that this very firm had quoted a price of Rs. 15.31 in December, 1963 when the LME price of copper was £ 236. Adding freight charges etc. it worked out to Rs. 3,580 per tonne. The ruling LME price during August, 1966 when the present tender was submitted by the firm was £ 485 per tonne and the landed cost worked to Rs. 11,685. Presumably, this substantial increase in price of copper, coupled with the difficulty in obtaining copper, were the main reasons which were responsible for the firm quoting a high price..... In the case of contract dated the 22nd April, 1967, the firm quoted a price of Rs. 34.65 and as this price was lower than that already accepted in the case of contract dated the 7th October, 1966, this price was considered reasonable.”

1.15. The Committee pointed out that *suo moto* extension of delivery period was granted by the Director General which ultimately resulted in a situation where Government could not effect risk purchase, at the expense of the firm within the prescribed period of six months. The legal opinion was that such *suo moto* extension would not correspondingly increase the period within which risk purchase could be made, as risk purchase has to be made within six months of the expiry of the date of supply mutually agreed upon between Government and the supplier. The Director General stated in evidence: “The position in regard to *suo moto* notices I have been able to understand is like this. Sometimes the period of delivery expires but by then the supplies have not been made. The way open to us is that we should terminate the contract or make another effort to get the supplies..... Generally it happens that when we give a *suo moto* extension the firm acts upon it. The contract (then) becomes binding. It is not that on the issue of *suo moto* notice we always fail. In the course of a year we place 12,000 to 15,000 orders. In a large number of orders we have to give *suo moto* extension in a bona fide effort to procure the stores. Sometimes we do fail. In this we failed. But we have taken all the action that lay within our powers to take.” The Committee asked whether it was desirable to stop *suo moto* extensions. The Secretary, Department of Supply stated that no “assurance” could be given that *suo moto* extensions could be stopped. In certain situations such action could prove “advantageous to Government..... By and large the position is that we do not give extension *suo moto*.” The Committee then pointed out that if extension was given, a letter should be taken from the contractor so that risk purchase rights of Government are not prejudiced. The Director General replied: “We have made a careful note of the suggestion.”

1.16. The Committee asked for copies of opinion expressed by Ministry of Law in regard to the question of risk purchase rights having been prejudiced in this case by *suo moto* extensions granted. These have been furnished. The Committee observe therefrom that after *suo moto* extension upto 15-9-67 had been given, the Ministry of Law were approached for advice whether contract could be cancelled at the risk and expense of the firm. The Ministry of Law stated (on 22-5-67) that "since the delivery period has been extended upto 15-9-67, cancellation of acceptance of tender prior to the expiry of the extended delivery period would not be legally in order" and further that the firm "may be advised to go ahead with the supplies and if they do not fulfil their contractual obligation by the extended delivery date, the acceptance of tender shall be cancelled at their risk and expense." Subsequently, after the firm had finally defaulted and Ministry of Law were consulted again, the Ministry of Law stated (on 8-11-67) that "the date of breach can only be the last extended delivery period, viz., 15-9-65 (which was mutually agreed upon). General damages can be claimed, the measure of which will be the difference between the contract rate and market rate on the date of breach. Since date of breach is over six months back there can be no question of risk purchase."

1.17. Drawing attention of the witness to the fact that at every stage when risk purchase tenders were invited the defaulting firm continued to quote and get its tender accepted, the Committee enquired how a defaulting firm could be permitted to quote over and again and also how the Department accepted the offer. The witness, in reply, stated: "Here we have to go by the advice given to us by the Ministry of Law. The legal position is that if there is breach of contract and you go out for risk purchase you have to give opportunity to all the firms including the firm which has defaulted and if their rate is lowest you have necessarily to accept and place order with them. Otherwise, you cannot recover any risk purchase amount." The representative from the Ministry of Law further stated: "When it is a breach of contract, under the terms and conditions of the contract, the purchaser has a right to make risk purchase within six months. He has to ensure that the loss which the seller is ultimately asked to bear is mitigated. This is an obligation laid upon the purchaser under the law. The only way this obligation can be discharged is to afford the seller an opportunity to quote. If he is afforded an opportunity, he will quote the lowest and the difference between the contract and the lowest price would be to his advantage."

1.18. The Committee enquired whether, in the original contract it could be provided that in case of default the defaulting firm will not be allowed to tender again. The Secretary, Department of Supply stated: "The question has been examined. We have come to the conclusion that we shall give him one opportunity and if he fails, we shall ignore his offer..... The advice was that you must give an opportunity to the defaulting firm also to quote..... We were told that it is one of the duties of the purchaser as much as of the supplier himself. That is the decision of the court. Based on that it was felt that he must be given an opportunity to quote..... We enforced another thing. We asked him to furnish 10 per cent security deposit which is forfeited in case of default. That is another precaution."

1.19. The Committee enquired whether even after the first default, the firm could not be debarred from participating in the risk purchase tender and whether it was necessary to give it a second opportunity. This would be done if necessary by making a suitable provision in the contract. The representative of the Ministry of Law stated: "When it is a breach of the contract, under the terms and conditions of the contract the purchaser has a right to make risk purchase within six months. He has to ensure that the loss which the seller is ultimately asked to bear is mitigated. This is an obligation laid upon the purchaser under the law namely he has to mitigate the loss. The only way this obligation can be discharged is to afford the seller an opportunity to quote. If he is afforded an opportunity, he will quote the lowest and the difference between the contract and the lowest price would be to his advantage..... If, as suggested the condition is incorporated in the contract, at least the position will be different."

1.20. The Department of Supply have, however, in a note on the foregoing brought to the notice of the Committee the following opinion expressed by Ministry of Law:

"The Ministry of Law to whom a reference was made on the above point, have given the following advice on 26-11-69:

"We are consistently of the view that a defaulting contractor cannot be excluded from tendering for the risk purchase. If the Government ignore his tender, even though the lowest, the action of the Government would not be sustainable in law and the risk purchase loss would not be recoverable.

No special circumstances or reasons are brought out to deviate from the view consistently taken by us as aforesaid. The result is that the said view stands'."

1.21. The Committee, however, observe from extracts of legal opinion on the question of risk purchase, which are given in Appendix I to this report, that at one stage the Director General, Supplies and Disposals suggested the insertion of the following clause in the standard form of the contract:

'If the contractor has defaulted in performance of his original contract, his tender for risk purchase is liable to be ignored, even though lowest, at the option of the Secretary'.

On this clause, the following opinion was expressed by Ministry of Law:

"The proposed clause implies that it would be open to reject the tender of a firm, even though lowest, even if it was a case of first default only. If such an action is taken, it would not be possible to sustain the risk purchase."

The matter was again reconsidered when the contract officer (a legal functionary) expressed the following view:

"If the firm agrees to this condition, there would seem to be no legal impediment to implementation—as far as I can see. I'll discuss this matter on my next visit i.e. 31-10-68."

Thereafter the following was recorded:

"The condition to be added at the end of clause 14(7) (iii) of DGSD-68 (Revised) may be as follows:—

'If the contractor has defaulted in performance of his original contract, it is hereby agreed that the purchaser has the right of ignoring his tender for risk purchase even though the lowest'.

It is suggested that the decision to ignore such a tender may be taken at a sufficiently high level to ensure that the right given to the purchaser is properly used."

Finally the Additional Legal Adviser suggested the following clause:

"We would like to change the wordings of the proposed condition suggested by the Contract Officer, O.S.L. (Lit) as indicated below:

'If the contractor had defaulted in the performance of the

original contract, the purchaser shall have the right to ignore his tender for risk purchase even though the lowest.'

The alterations were discussed with the Joint Secretary and Legal Adviser who concurs."

1.22. In the opinion of the Committee, this case raises a number of important issues:

- (i) The firm with whom a contract for 46,000 Nos. of the store was placed at a unit price of Rs. 15.31 in January, 1964, did not supply more than 19,500 Nos. They, however, supplied identical stores against two other contracts placed with them subsequently in October, 1966 and April, 1967 at unit prices of Rs. 36.65 and Rs. 34.65 respectively. To help the firm to complete the supplies against the first contract, the release of 34.78 tonnes of copper, a scarce metal, was arranged by Government even though the contract contained no provision for it. However, after availing of this facility, the firm did not make any further supply against the first contract. Government have stated that the copper supplied to the firm against the first contract was not "apparently" utilised for making supplies against the two subsequent contracts, which provided for much higher unit prices, but the firm had admitted that unutilised stocks of the metal are "still lying with them". The Committee also observe that the firm have had "various other orders" from the Railways for similar stores against which release of copper had been obtained by them on the basis of import licences. The Committee would like it to be comprehensively investigated how the firm have utilised the material supplied to them against all the orders placed with them since 1964 and to be apprised of the results of the investigation.
- (ii) The provisions of the contracts executed with suppliers generally provide for the stores being purchased at the risk and expense of the supplier, in the event of his defaulting on delivery. The Committee observe that in this case, on both the occasions on which "risk purchase" tenders were invited, after the firm defaulted, the defaulting firm quoted and ultimately the "risk purchase" order was placed on them. It seems anomalous that when a firm has defaulted in making supplies and purchases are being made at its "risk and expense", the defaulting firm should

get the risk purchase order. The Committee appreciate that, under the provisions of the standard terms of tender and contract as they now stand, Government may be obliged to give the defaulting firm this opportunity, but they would like it to be examined whether, by appropriately amending the terms of tender and/or contract, it would be possible to ensure that a defaulting firm is debarred from getting the "risk purchase" order. From copies of legal opinion on the subject which were furnished to the Committee, they observe that there may be "no legal impediment to implementation" of this suggestion, if a firm "agrees to this condition."

- (iii) Legal opinion is fairly well settled that an order placed at the 'risk and expense of the firm', as a result of its breaching the terms of delivery stipulated in a contract, should be placed within six months of the date of breach. It is also well settled that the date of breach is to be reckoned with reference to the date of delivery which is mutually agreed upon between the supplier and Government. In the present case, Government extended the date of delivery stipulated in the contract suo moto upto a period of two years, with the result that their "risk purchase" rights were prejudiced. While the Committee appreciate that Government will have to take a practical view of situations that arise in the course of dealing with 12,000 to 15,000 contracts in a year and that in certain cases suo moto extensions cannot be avoided in a 'bona fide' effort to procure the stores", they would like to stress that Government should in such cases obtain expeditiously the suppliers' concurrence to extensions given suo moto, so that their risk purchase rights are not jeopardised.
- (iv) The legal opinions that were given in this case about the date of breach for the purpose of "risk purchase" were contradictory. In May, 1967, when legal opinion was sought on the question of cancellation of the contract, at the risk and expense of the contractor, the opinion given was that the date of delivery stood extended up to 15th September, 1967 and that, therefore, the "cancellation of acceptance of tender prior to the expiry of the extended delivery period would not be legally in order". However, subsequently, in November, 1967, after the firm had finally defaulted, the legal opinion was that "the date of breach

can be only the last extended delivery date, viz, 15th September, 1965 (which was mutually agreed upon). Since date of breach is over six months back, there can be no question of risk purchase". The Committee hope that due care would be exercised before legal opinions are given, so that the Department of Supply is properly guided in any action that they may take in terms of a contract.

- (v) Though Government would appear to have lost their "risk purchase" rights in this case, it would appear that in terms of the legal opinion given, "general damages can be claimed, the measure of which will be the difference between the contract rate and market rate on the date of breach." The Committee would like action to be speedily initiated for recovering such damages from the firm.
- (vi) The Committee would also like action to be taken for utilisation recovery of 12.308 tonnes of Copper lying unutilised with the firm.

Audit Paragraph

Purchase of non-metal helmets

1.23. On an indent from the Ministry of Home Affairs, the Director General, Supplies and Disposals, placed an order in February 1964 on a private firm for supply of 1.5 lakh non-metal helmets of two different sizes (specifications formulated by the Indian Standards Institution) at the rate of Rs. 10 per helmets. The helmets were to be supplied to the State Governments and certain public/private sector undertakings for use in their civil defence establishments. The expenditure on the helmets supplied to the States was to be shared equally between the Centre and the States whereas the expenditure on those supplied to the public/private undertakings was to be borne by the undertakings in full.

1.24. Out of 1.5 lakh helmets, the firm supplied 74,526 helmets to various State Governments and public/private sector undertakings during 1964—66. The order for the balance quantity was cancelled in September 1966 by the Director General, Supplies and Disposals, on the request of the Ministry of Home Affairs as the State Governments complained that many of the helmets were oversized, inferior in quality, warped and sagged on slight heat and were unsuitable for use.

1.25 Of the helmets supplied, 48,805 (value Rs. 4.88 lakhs) were found unsuitable for use and are now lying with certain State Governments and public|private sector undertakings.

1.26 The Ministry of Home Affairs have stated (January 1969) that "the material used has been tested and found to conform to the specification and hence the defects of warping and sagging must apparently be due to certain shortcomings in the specification itself. The question of removal of other defects, most of which are attributable to the supplier, is being vigorously pursued by the Director General, Supplies and Disposals with him. Government expect that with the removal of other defects the helmets will become usable."

[Paragraph No. 86, Audit Report (Civil), 1969.]

1.27 Drawing the attention of the witness to the fact that the helmets procured in this case proved unsuitable, the Committee enquired whether samples were obtained from the firm prior to supply and tested for suitability. The Secretary, Department of Supply stated that this was done. There were three stages at which testing was done—firstly, before the order was placed, secondly, when the goods were tendered for inspection by the firm, and thirdly, after complaints were received that the helmets were far too big. A series of tests like shock absorption test, penetration test, performance test and inflammable test were carried out. The test reports were issued in October, 1963, March, 1966 and April, 1968 respectively. The tests showed the helmets "to be in accordance with specifications."

1.28 The Committee pointed out that the last test report issued in April, 1968 referred to certain deviations from specifications, which the Ministry of Home affairs, the indenter in this case, had brought to the notice of the Department of supply. These deviations were:

- (a) "the harness was not detachable or replaceable";
- (b) "the head band was not adjustable";
- (c) "the size of the head band was greater than that marked on the crown straps"; and
- (d) "the wearing height was less than the specifications, i.e., 65mm. instead of a minimum of 80 mm."

The Committee were informed that in the opinion of the Department of supply, there were no deviations from specifications. In a note, the position has been explained as follows:

"Regarding (a) above, it is stated that the harness can be easily removed by means of scissors or a blade as it is made of Niver. Replacements have to be provided by the indenter

as these had not been ordered by them. The replacement harness may have buttons or clips for being easily fixed in the helmet shell. This had to be decided by the indenter.

As regards (b) above, the deviation is due to the fact that head band size was stipulated as-fixed in the A/T. There was, therefore, no question of using 'adjustable' head band.

As regards (c) above, this is a fault on the part of the firm in making wrongly in the crown straps. This is a clerical error.

As regards (d) above, since the head band was fixed instead of being adjustable, the wearing height of 80 mm could not be obtained on all sizes. This slight deviation of 1.5 c.m. arises out of the provision for the fixed bands."

The representative of the Ministry of Home Affairs, however, stated that their view was that "the supplies were not according to specifications." The reasons for their inability to accept the views of the Supply Department on each of the foregoing points were enumerated as under:

- (a) Regarding detachability of harness: The harness is fixed to the shell by means of rivets. The method of removal is by "cutting off the aluminium rivets" which "can hardly be regarded as easy." "The mode of attachment of the harness with the helmet has to be subject to the fulfilment of easy replaceability of the harness."
- (b) Regarding head-bands not being adjustable: After the indents were placed, the Director General of Civil Defence in the Ministry of Home Affairs had asked the Director General, Supplies and Disposals in April, 1963 to procure the helmets in accordance with an emergency ISI specification No. ISE-2300—1963 of March, 1963. This specification provided for the shells of helmets being fitted with adjustable types of head bands. In April, 1963, the Director General, Supplies and Disposals, sought confirmation about the requirements of various sizes in which, however, fixed head band sizes were mentioned against each size. The requisite confirmation was given. "To the extent the reply of the Directorate General of Civil Defence did not reiterate that in accordance with (ISI) specifications the head band was to be adjustable. . . . it contributed to the supplies being ultimately made in fixed sizes."

- (c) Regarding size of head-bands being greater than marked: "Unless all the helmets supplied by the firm are collected and tested for the size of the head-bands it cannot be said that the deviation is due only to the firm not making correctly the size as crown straps."
- (d) Regarding wearing height being less than specification requirement: "Wearing height could have been made to conform to specifications irrespective of whether the head band is adjustable or fixed in size".

1.29. The Committee drew the attention of the witness to the fact that other major defects like wire frame sagging, etc. had been pointed out in the helmets supplied. The Secretary, Department of Supply replied: "That position was also checked. It was not prescribed that thermoplastic material would not be acceptable. It (the supply) was strictly in accordance with ISI specification. . . . But in the latest specification, the use of thermoplastic material has been forbidden."

1.30. The Committee enquired whether in the course of tests carried out on samples, any attempt was made to ascertain whether the helmets would fit various head sizes. The Secretary, Department of Supply stated: "Unfortunately the person who had tried it thought that this was supposed to be worn on the turban or something else." The Committee enquired why the indenting department did not consult the actual users for their requirements. The position in this respect has been explained by the Ministry of Home Affairs in a note as follows:

"The helmets are not the personal property of any individual users. They are meant for use by members of the Civil Defence Corps who are volunteers. On his ceasing to be a member of the Corps by reason of expiry of term of enrolment, resignation, etc. the helmet of one volunteer is available for use by another volunteer. Therefore, the requirements of each State cannot be determined precisely with reference to individual sizes. Provision is made in the ISI specification for adjustability of the size of the head-band so that the same helmet could suit the requirements of different users. For these reasons and since it was intended that helmets should be supplied according to ISI specification (which provided for adjustability of the size of head-band), it was not necessary to ascertain the requirements of each State Government in regard to sizes."

1.31. The Committee wanted to know why the helmets had turned out to be oversized. The Secretary, Department of Supply stated that the helmets were procured on the basis of an ISI specification. He added: "The emergency ISI specifications were drawn up in a great hurry during the Emergency. These were drafted by a com-

mittee consisting of eminent technical people. Unfortunately, they tried to copy the British specification and got mixed up in sizes. A mistake, a vital mistake to my mind, occurred.....The larger helmet could not fit anybody except perhaps the astronaut. The smaller one could fit only on a few over-size heads." The representative of D. G. S. & D. elaborating the position stated:

"On all the ISI Committees which are meant for the formulation of specifications, various interests are represented, such as, users, manufacturers, buyers, and sellers. The Secretariat part of work only is done by the ISI.....This was a very simple subject matter and that is why, I suppose, all the experts failed to notice the error in dimensions. According to the British specification, the cap size 7 $\frac{1}{4}$ " means the diameter of the equivalent circle, in inches whose circumference is equal to the perimeter of the head. The confusion was mainly with regard to major axis and minor axis, as specified in the Emergency Indian Standards Specification. It was either a clerical or arithmetical error. Whatever it may be, the result was that these helmets did not fit anybody. The helmet is so big that except when you put it over a turban it would not fit you. Size 'A' is supposed to be smaller, but only two parts of it are useful and that too for exceptional heads. ISI has remarked in the foreword to the new specification that they have now introduced three sizes—small, medium and large. The perimeter of the small size is 500—540 mm. This did not find a place anywhere in the earlier specification where the lower size was from 600 mm. to 647 mm. and the upper size from 650 mm. to 705 mm. The perimeter of the medium one is 540—590 mm. You will appreciate, even that is smaller than the smallest size of other specifications. The consequence is that we have in hand helmets 50 per cent of which are absolutely useless for anyone so far as size goes. Whom do we blame for this? Permit me to say, Sir, that we can blame none because I cannot go back to people who are dead and gone....." The Committee enquired why the British specification was accepted. The Secretary, Department of Supply replied: "The mistake was that they did not try to adopt the British specification *in toto*. Now we are adopting it *in toto*." Explaining how the deviations rendered the helmets over-size, the Department of Supply have stated in a note subsequently submitted to the Committee as under:

"The order was placed for fixed size helmets ranging from headbands 165 mm. to 192 mm. (Minor axis).

The difference in the sizes of the helmets in the Emergency Spe-

cification No. ISE-2300-1963, revised L.S. Specification No. IS-2300-1968; and British Standards Specification is tabulated below:

Comparative study of the head-band sizes

Emergency ISE-2300-1963			Revised I.S. 2300-1968	British Standards 2826-1957 and 2095-1958		
Minor axis (mm)	Major axis (mm)	Calculated Perimeter (Circumference; of the Head-Band) (mm)	Specified Perimeter (Circumference of the Head-Band) (mm)	Specified Perimeter (Circumference of the Head-Band) (mm)		
Size 'A'	165	214	600	Small	499	
	168	218	610		510	508
	171	222	622		520	518
	174	226	634		530	527
	177	230	647		540	537
Size 'B'	180	234	656	Medium	537	
	183	238	666		550	546
	186	242	678		560	556
	189	246	697		570	565
	192	250	705		580	575
				Large	584	
			590		594	
			600		603	
			610		613	
			620		622	
			630	632		
			640	641		

From the above comparison it will be seen that size 'B' with minor axis ranging from 180 mm. to 192 mm. in the Emergency Specification No. ISE-2300-1963 was very much 'out-sized' and has, therefore, been omitted altogether from the revised specification No. IS-2300-1968. Size 'B' would fit nobody. In fact, even size 'A' would fit in rare cases only."

1.32. The Committee enquired whether the provision of adjustable head bands (which the contract failed to provide for) would have rendered the helmets usable. The Committee were informed that "the arrangement of adjustable head-bands provided in the finalised Emergency specification ISE-2300-1963 was unfortunately lost sight of both by the D.G.S.&D. inspector (who processed the indent)

and the indentor." The helmets were in two sizes—size 'A' and size 'B'. Even if adjustable head-bands had been provided, "size 'B' would not have served any purpose being very much out-sized. Even the utility of size 'A' would also have been restricted."

1.33. The Committee asked the representative of the Indian standards Institution to elucidate the circumstances which led to the formulation of a faulty specification. The witness stated: "The Indian standard specifications are in the nature of voluntary standards. These standards become mandatory only if they are incorporated in the contract and the suitability or otherwise of the standards should be examined before that is done.

The request in this case for formulating Indian standards specifications was made by the DGS&D. This was for steel helmets for civil defence and stirrup pumps and it was received on 22nd December, 1962. Since this was in connection with an emergency, the time given to ISI was only 15 days.

ISI immediately constituted a committee and they were able to obtain the services of eighteen persons and these included representatives from DGS&D, Civil Defence, Ministry of Health, Fire Adviser, Ministry of Defence and manufacturers, and other technological interests. The first meeting was on 3rd January, 1963. The second meeting was on 8th January, 1963 and this meeting was attended by eight persons. The DGS&D insisted that we should produce our specifications very quickly. We made out the drafts and circulated them for comments to all the people concerned on 8th February 1963. We had also indicated that the comments should be received in our office at any rate on or before 16th February, 1963. Now, what I want to submit is that practically no comments were received by us except in one case. In this case they had suggested some changes and these were discussed with the Chairman. Then final draft was prepared and sent to the DGS&D and other people. This was on 12th March, 1963. Then, the printed standard was sent to all interests on 1st April, 1963.

The first comment on this standard was communicated to us in January, 1966, three years later and this suggested was mainly about sizes and changes were accordingly considered by the committee and a draft amendment was agreed to be issued. Before that no comments came though a large number of people participated in all our meetings." The witness added: "In our process of formulation of standards, we receive and consider a large number of suggestions and comments at various stages even after printing the standard. In this case only as late as 1966, one British Company indicated to us that there was a discrepancy in size, which was considered

by our Technical Committee finally leading to the revision of the standard. Similarly, periodically we get comments and we go on revising all our standards to keep them in line with times and advances in technology. As I pointed out these standards are prepared by experts with all the knowledge available at that time in the country and are voluntary. These are implemented by different departments after examining the suitability of the standards for individual purposes in each and every case. There are various requirements in the standard. There are various dimensions given. In some cases it is quite likely that some departments do not like this particular specification and I think they are free to make such alterations and suggestions in the specifications to suit their intended purpose." In reply to a further question, the Committee were informed that "normally the Indian Standards Institution takes about 52 months on an average for formulation of a regular standard". During evidence, it was further stated: "The specifications were drawn up in a tremendous hurry during the Emergency. And we now have within the ISI a Helmets Sub-Committee, and we have in that Sub-Committee qualified people. As you will see from the new specifications, they are absolutely first-class."

1.34. The Committee enquired whether there was scope for using these helmets or not. The representative of the DGS&D, replying, deposed: "The harness and the head-band can be removed easily by shearing off the 'nivar' of the harness by means of scissors or a blade. The replacement head-bands or harnesses which the Indentor has to provide will be fixed by slipping in the same through the slots provided in the lugs rivetted to the shell of the helmets. Appropriate alternative designs of the head-bands and harnesses have been got made by the DGS&D as a special case and as soon as their estimated prices are obtained from the contractor who supplied the helmets, the same will be submitted to the Indentor who may choose anyone of the designs keeping in view the economics and the utility of the same. If necessary, the Indentor may raise a separate indent for this replacement gear or alternatively by negotiations we may entrust the job to the same contractor if so suggested by the Indentor. It must be appreciated that the supply so far made is in accordance with the requirement of the Acceptance of Tender.

The 'SPARE' head-bands and harnesses are to be provided by the user department and not by the supplier of the helmet as they were neither indented by the Indentor nor included in the scope of the A/Ts placed on the supplier."

1.35. To a further question what the cost of these changes would be, the reply was: "We discussed this question with the firm. We

asked them whether they would carry out some alterations. They said that everything possible had been done by them and they had been left with unused materials on their hands on account of which they would incur heavy losses. We hope we will be able to get a substantial reduction in the price. Obviously it would be unfair to expect that he will do it free of cost."

1.36. The Committee wanted to know when defects in the helmets came to notice and what action was then taken on the complaint received. The representative of the Ministry of Home Affairs stated that the first complaint from the Government of Mysore came in January, 1965. "I must confess", he added, "that on receipt of this complaint, no serious notice was taken of it. Later on another complaint was received from the Government of West Bengal. Then only notice was taken seriously." In reply to another question, it was stated by Ministry of Home Affairs that "only 1,884 helmets had been supplied when the first complaint was received." The complaint was made by the Commandant General, Home Guards, Mysore. It was also stated that "it appears from letter No. SMH-2|5390-N|564Z-N|III-A|7768 dated 8th February, 1965 addressed by the Directorate General of Supplies and Disposals to the Director General of Civil Defence that a copy of the Commandant General's letter No. Admn. 19|DCD dated 11th January, 1965 was also received by the Directorate General of Supplies and Disposals, presumably simultaneously." The representative of the Department of Supply, however, informed the Committee that "the complaint was not brought to our notice until 21st December, 1965."

1.37. The Committee enquired what action to fix responsibility had been taken in respect of failure to stop supplies after the first complaint was received. The Ministry of Home Affairs have stated in a note that "steps are being taken to fix responsibility for failure to pursue the complaint received from the Government of Mysore. It may, however, be added that subsequently on a request from the State Government further supplies of helmets to the State were cancelled."

1.38. The Committee feel that a series of omissions resulted in Government being saddled with a supply of about 75,000 helmets, the bulk of which, costing Rs. 4.88 lakhs, have been found "absolutely useless."

In the first place, the specifications evolved for the helmets by the Indian Standards Institution were faulty. There was a "vital

mistake" which arose due to a "confusion mainly with regard to the major axis and minor axis" of the helmets.

The helmets produced according to the specifications therefore turned out to be so over-sized that "the larger helmets could not fit anybody except perhaps the astronaut." Besides, the specification permitted the use of thermoplastic material which caused other defects in the helmets like sagging etc. It has been stated that the specifications were drawn up in a "great hurry" within 15 days, as against "52 months" which is required on an average for formulation of standards, but the Committee fail to understand even then how a vital and elementary detail like the size of the helmet was not adequately investigated before formulating the specifications. It is even more regrettable that such faulty specifications should have been drawn up, when the requirement was in connection with the Emergency, which arose in 1962, and that it was left to a foreign party to point out, after a lapse of three years, that the sizes evolved were not correct.

In the second place, the fact that the helmets were over-size escaped notice even at the stage a prototype produced by the firm was tested. A host of tests like "performance test", "penetration test" and "inflamability test" were carried out, but nobody investigated whether the helmets would suit various head-sizes. It is astonishing that this simple user's test was not carried out even at a subsequent test when the helmets were tendered for inspection against the contract. The explanation that "the person who had tried it thought that it (the helmet) was supposed to be worn on the turbans or something else" is ingenious but unconvincing.

Thirdly, the specifications drawn up for the purpose of the contract themselves departed in some respects from the I.S.I. specifications from which they were derived. The I.S.I. specifications had provided for the helmets being fitted with adjustable head-bands, the provision of which might have rendered part of the helmets supplied usable but due to an omission on the part of the indenting authority as well as the authority which processed the indent, this was "unfortunately lost sight of".

Fourthly, the supply itself would appear to have deviated from the specifications in certain respects like wearing height etc.

Lastly, "serious notice" was not taken of the complaints which were received from the users initially about the size of the helmets. The first complaint was received in January, 1965 when only 1,834

helmets had been supplied and it would appear that this complaint was received not only by the indenter but also in the Directorate General of Supplies and Disposals. It was only after complaints from other users started coming in that the matter was investigated and steps taken to stop further supplies, but by that time nearly 75,000 helmets had been either supplied or were ready.

1.39. The Committee note that the officials who were connected with the formulation of the standards are now "dead and gone". But in regard to the other omissions that occurred, the Committee would like an investigation to be made and responsibility fixed.

1.40. The Committee also observe that efforts are under way, in consultation with the indenter and the supplier, to render the helmets usable. The Committee would like to be informed of the outcome of these efforts.

Audit paragraph

Non-accountal of import licence assistance given for purchase of non-ferrous alloys.

1.41. The following points were noticed during a review of five acceptances of tender placed on a firm (at Hathras) by the Director General, Supplies and Disposals, during the period June, 1963 to April, 1965 of non-ferrous alloys:—

- (a) The contract provided for grant of import recommendation certificates by the Directorate General for import of raw materials required for manufacture of the alloys. The following table shows that the value of import recommendation certificates was, in the first three cases, higher

than the value of finished stores contracted for f.o.r. Hathras|Calcutta:

Date of acceptance of tender (Stores)	Total f.o.r. value of stores contracted for (In lakhs of Rs.)	Date of issue of import recom- mendation certificate	Value of import recom- mendation certificate (In lakhs of Rs.)
1. 10th June, 1963 (lead tin bronze)	1.97	29th November, 1963	2.43
2. 25th July, 1964 (lead-bronze ingots)	6.00	12th August, 1964	7.06
3. 31st August, 1964 (Gun metal ingots)	6.58	1st September, 1964	7.12
4. 25th February, 1964 (Bronze ingots Class II)	3.93	26th February, 1965	3.50
5. 8th April, 1965 (Bronze ingots Class II)	6.54	28th April, 1965	5.66

1.42. By April, 1964 the firm completed the supplies against the contract of 10th June, 1963 (serial number 1 above) but, due to delay by the indenter in providing foreign exchange, no licence for import of raw material is stated to have so far been issued. The firm consequently filed a civil suit in August, 1967 which is pending in the Delhi High Court. In the meantime, the value of import for which licence for that contract is claimed is stated to have gone upto Rs. 6.14 lakhs, constituting more than 300 per cent of the f.o.r. value of stores contracted for (Rs. 1.97 lakhs).

1.43. (b) The table below shows the quantity of raw material imported by the firm against import licences and the quantity of alloys supplied by it for the other four acceptances of tender:

Date of acceptance of tender	Quantity on order	Quantity of raw material stated to have been imported against the I.R.C.	Quantity of finished goods which could have been manufactured from the imported raw material	Short fall in the quantity supplied as compared to		Remarks
	Quantity actually delivered			contracted quantity	Quantity which could have been manufactured	
1	2	3	4	5	6	7
(Quantity in tonnes)						
(i) 25th July, 1964	152 ----- 101·83	103·44	101·83	50·17		The quantity on order was reduced to 101·83 tonnes on 31 st December, 1966.
(ii) 31st August 1964	151 ----- 67·20	106·24	99·26	83·80	32·06	The outstanding quantity of 32 tonnes was cancelled in January, 1966 at the firm's risk and expense and repurchase was made from the same firm in February, 1966

	1	2	3	4	5	6	7
							at an extra cost of Rs. 1.73 lakhs which was recovered from the firm's bills. As the firm disputed this recovery, the matter is pending arbitration since July, 1966.
(iii) 25th February, 1965		75 ----- 54.60	57.17	54.60	20.40	..	--
(iv) 8th April, 1965		97 ----- 24.31	94.39	91.34	72.69	67.03	The Supplies were to be completed by 31st December, 1966. No. action has so far been taken to cancel the outstanding quantity.

1.44. The firm stated that, against the contracts (i), (ii) and (iv), import of only the quantities mentioned above was possible from the import licences issued to it. This statement was not verified by the Director General of Supplies and Disposals with reference to the original invoices and/or the prevailing market rates abroad against (i) and (ii) while a final decision against (iv) is still pending. It has been stated (June, 1968) by the Department of Supply that this verification will be done shortly.

(c) The firm continues to retain the excess raw material imported with Government assistance in the case of the contract of

8th April, 1965 mentioned above. According to a legal advice obtained in December, 1965, "the firm cannot be asked to make over the surplus material and no legal action can be taken in that behalf" since "Government did not undertake contractually to issue an import licence for raw material but only gave an *ex gratia* assistance of recommending grant of import licence."

(d) While considering the firm's tender for the contract of 31st August, 1964, the Director General, Supplies and Disposals, was aware that the quotas of the firm had been stopped by the Director General, Technical Development, on the advice of the Controller of Imports and that some investigations had been going on against the firm. Nevertheless, on the ground that the firm was registered and its performance in the past had been satisfactory, the firm's offer was accepted without ascertaining the position from the Controller of Imports and that contract as well as the two subsequent contracts dated 25th February, 1965 and 8th April, 1965 executed. The Director General, Technical Development has now stated (December, 1968) that "From our records it is observed that we neither received any advice from the Chief Controller of Imports and Exports, New Delhi nor we issued any instructions to the Director General (Supplies and Disposals) regarding the stoppage of quota of M/s. during the period 1963-64 and 1964-65." According to the Department of Supply (February, 1969), "the statement in the purchase proposals" regarding stoppage of firm's quota was "not factually correct."

(e) In October, 1963, the firm had told the Director General, Supplies and Disposals, that it used scrap for manufacture of bronze ingots. This was not taken into account while determining the quantum of import licences required by the firm for import of raw material.

[Paragraph No. 134, Audit Report (Civil), 1969].

1.45. Taking up the contract dated 10th June, 1963, mentioned as case No. 1 in the Audit paragraph, the Committee drew the attention of the witness to the fact that the party had taken the case to the court. The Committee enquired on what grounds the suit had been filed. The witness stated that the firm had filed a suit against Government in July, 1967 for import licence for 65 metric tons of metal which had been used by it from its own sources for making supplies under the contract. The tender enquiry had stipulated that foreign exchange for metal required for supply of ingots would be available—in respect of tin from free resources and for copper and zinc against DLF loans. According to

the rules, the indentor, who in this case was the Government Precision Instrument Factory, Lucknow, had to secure clearance for import from the Director General, Technical Development and also obtain sanction for release of foreign exchange. The witness added: "We started processing the case in the hope that the indentor will get the clearance from the Director General, Technical Development and also get the foreign exchange from the Department of Economic Affairs." However, the DLF loan against which the bulk of the releases were to be made "lapsed" and "it took over three years to get the thing revived". The firm had therefore sued Government "to compensate it for the difference between the landed price today and the landed price of the metal at the time the order was given to it." The compensation claimed was Rs. 5.58 lakhs. The Committee enquired about the present position of the suit. They were informed: "Documents of reliance have been filed by the respective parties and admissions/denials of the said documents have been completed. The stage of recording evidence, if any, is awaited."

1.46. The Committee wanted to have a copy of the plaint filed by the firm as also copies of correspondence exchanged with the indentor about release of foreign exchange. These have been furnished. From these documents the following position emerges:

- (i) It was a condition of the contract that import licence and foreign exchange to the tune of Rs. 2.43 lakhs would be given to the supplier by Government to enable them to import raw materials for manufacturing the contracted goods.
- (ii) The firm submitted an application for foreign exchange addressed to the Chief Controller of Imports and Exports and sent it to the D.G.S.& D. on 20th June, 1963. After obtaining elucidations from the firm regarding prices and quantities mentioned in the application, the D.G.S.& D. forwarded it, with an import recommendation certificate to the Chief Controller of Imports and Exports on 28th November, 1963.
- (iii) The firm were in the meanwhile asked to use the raw materials from their own stocks for effecting supplies on the understanding that they would be replenished. The supplies were completed by them on 15th April, 1964.
- (iv) The firm has sued Government "to pay the difference in the landed cost of raw materials prevailing on the date

the tender was given and the landed cost of raw materials prevailing on the date of their arrival after the licence is given or in the alternative pay Rs. 5,85,000 as compensation and/or damages."

1.47. As regards release of foreign exchange for issue of import licence, the following was the chronology of events:

10th March, 1964 .	.	Indentor asked by DGS&D to intimate the DLF Loan No. against which foreign exchange was released to facilitate issue of import licence.
8th April, 1964	}	Indentor reminded.
14th May, 1964		
5th June, 1964		
6th June, 1964		
6th June, 1964 .	.	Indentor addressed Ministry of Industry for information desired by DGS&D.
20th July, 1964 .	.	DGS&D also addressd Ministry of Industry.
13th August, 1964 .	.	Ministry of Industry informed DGS&D that DLF loan had been closed and that a fresh application for foreign exchange would be necessary.
8th September, 1964 .	.	DGS&D intimated indentor of requirements for a fresh application for release of foreign exchange.
17th November, 1964 .	.	DGS & D reminded indentor.
28th November, 1964 .	.	Indentor asked Ministry of Industry to release foreign exchange for Rs. 4.10 lakhs.
30th January, 1965 .	.	DGS&D informed indentor that due to rise in price, foreign exchange release for Rs. 4.83 lakhs would be necessary.
15th March, 1965 and 14th May, 1965	.	Correspondence between DGS&D and indentors about basis on which revised requirement had been worked out.
8th March, 1965	}	Correspondence between DGS&D and Ministry of Industry about release of foreign exchange.
17th April, 1965		
24th May, 1965		
24th July, 1965		
31st August, 1965		

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- 21st August, 1965 Ministry of Industry replied to Deptt. of Supply saying that due to critical foreign exchange position the case has been temporarily deferred.
- 25th September, 1965 Ministry of Industry informed Department of Supply that due to critical foreign exchange situation all foreign exchange allocations had been cancelled by Ministry of Finance.
- 28th April, 1966 }
 23rd June, 1966 }
 19th July, 1966 } Ministry of Supply reminded Ministry of Industry.
- July, 1967 Secretary, Department of Supply wrote to Secretary, Ministry of Industrial Development regarding the case.
- 12th August, 1967 Secretary, Industrial Development suggested that a fresh application for foreign exchange should be made out by indenter.
- 6th September, 1967 DGS&D intimated particulars of prices etc. to indenter for a fresh application.
- 16th September, 1967 DGS&D reminded indenter.
- 23rd September, 1967 Indenter sent application to Ministry of Industry.
- 13th October, 1967 Application forwarded to Chief Controller of Imports and Exports.
- 29th December, 1967 Import licences issued by Chief Controller.
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1.48. The Committee note that under the terms of the contract foreign exchange to the tune of Rs. 2.43 lakhs was to be provided by Government to the supplier for import of raw materials required for supply of the contracted goods. Pending issue of licence, the supplier was asked to use raw materials from his own stocks. The firm has now sued Government for the difference between the landed cost of raw materials today and the cost as on the date of submission of tender or in the alternative pay compensation/damages to the tune of Rs. 5.85 lakhs. As the matter is sub-judice, the Committee would like to reserve their comments on the various issues arising out of this case pending the outcome of the suit, which may be intimated to them.

1.49. Taking up the second case mentioned in the Audit paragraph, i.e., contract dated 25th July, 1964, the Committee enquired why after assistance for import of raw materials required for supply of 152 tonnes of lead bronze ingots had been provided, the quantity on order was reduced in December, 1966 to 101.83 tonnes. The Committee have been informed in a note as follows:

"The import licence was issued for a total value of Rs. 7.07 lakhs for import of:—

		Rs. lakhs
Copper	130.72 M/T	5.36
Tin	9.12 "	1.70
Zinc	6.08 "	
Lead	6.08 "	
		7.06

The firm could import within the value of I/L only the following quantity of metals :

		Rs. lakhs
Copper	83.82473 M/T	5.34
Tin	7.256 "	1.50
Zinc	6.071 "	0.90
Lead	6.053 "	0.10
		7.03

The firm could not import the full quantity of metals on account of rise in price of metals. Under the circumstances, the quantity of the alloy to be supplied had to be reduced on *pro rata* basis. It was stipulated in the firm's tender that the C.I.F. Price mentioned were approximate."

1.50. In reply to another question the Committee have been informed that the foreign exchange was released on 19th October, 1963 and 8th April, 1964 respectively for requirements of raw materials in connection with the contract.

1.51. The Committee observe that licence was issued to the firm in this case for Rs. 7.06 lakhs to import various quantities of non-ferrous metals required for supply of 152 tonnes of lead bronze ingots. Due to rise in the international prices of non-ferrous metals, the firm could not import the full quantities of metals, even

after availing of the licence in full and the quantity of ingots on order with the firm had to be reduced from 152 tonnes to 101.83 tonnes. The foreign exchange was released in this case in October, 1963 and April, 1964, the contract placed in July, 1964 and the import recommendation certificate issued in August, 1964. The time-lag that occurred at the various stages apparently operated to the detriment of Government. The international metal market is a highly sensitive one, where prices are prone to severe fluctuations day by day.

It is, therefore, essential that decisions regarding release of foreign exchange and issue of import licences are taken with the utmost expedition, in respect of contracts which involve import of metals, so that Government's interests are not adversely affected. The Committee trust that, based on their experience in this and other cases, Government would take steps to streamline procedures for release of foreign exchange and issue of import licence in respect of contracts which involve dependence on foreign metal markets.

1.52. The Committee pointed out that in respect of the third and fifth contracts mentioned in the Audit paragraph, i.e., contracts dated 31st August, 1964 and contract dated 8th April, 1965, the firm had retained some of the metal which it had imported for the purpose of making supplies to Government. The Committee enquired whether, as a matter of general procedure, the requirements of imported raw materials were worked out before tenders for supply are called. The witness stated that this was not done before tenders were called. The tender notices in the cases mentioned in the Audit paragraph for instance only generally indicated that foreign exchange for raw materials would be available either against free resources or DLF loans, USAID or IBRD loans. But after tenders were received, a comparative statement was prepared. He added: "When we prepare the comparative statement, the quantity of metals of different kinds that he is to import is worked out; the C.I.F. price is also worked; the quantity of foreign exchange required is also worked out. All these statements are taken into the integrated picture to take a decision as to who is the lowest tenderer."

1.53. The Committee enquired how it was ensured that the tenderers were supplied only the quantity of imported raw materials that they required for fulfilling the contract. The witness stated that there were specifications items which indicate the product-mix. He added: "We give the I.S.I. Specification number and say that the tin may be used to the extent of

4 per cent. to 6 per cent., lead 4 per cent. to 6 per cent., zinc 4 per cent. to 6 per cent. etc. I have cases in which the man might have used tin to the extent of 6 per cent. instead of 4 per cent. or instead of 4 per cent. wastage he has 6 per cent. wastage. With these percentages these calculations are made." The Committee asked for particulars of raw materials imported against each of the five contracts, the foreign exchange released and the basis on which the releases were worked out. They also wanted to know whether Government had investigated in all the five cases about the raw materials used and if so, what the results of the findings were. The data given on these points to the Committee is summarised below:

(i) *Foreign exchange released for the contracts*

Contract No.	A/T No.	Value of foreign exchange released	Quantity for which import licence was issued			
			Copper	Tin	Zinc	Lead
		Rs.	(in Metric Tons)			
1	*6134 (10-6-63)	2,43,000	59.804	3.897	2.598	
2	6804 (25-7-64)	7,05,888	130.720	9.120	6.080	6.080
3	6819 (31-8-64)	7,12,333	124.520	10.260	0.930	16.800
4	7103 (25-2-65)	3,50,287	68.250	3	2.250	2.250
5	7227 (8-4-65)	5,66,218	87.300	5.820	1.940	1.940

*Import licence issued after Completion of Supplies.

Import licence returned by the firm.

(ii) *Basis for working out foreign exchange releases.*

A/TNo.	Rate per M/T for Copper	Rate per M/T for Zinc	Rate per M/T for tin	Rate per M/T for Lead
	Rs.	Rs.	Rs.	Rs.
6134	3,200	1,120	11,500	..
6804	4,200	1,800	16,000	1,600
6810	4,200	1,800	16,000	1,600
7103	4,300	1,600	16,500	1,650
7227	5,230	1,560	17,680	1,915

(iii) *Position of utilisation of quantities actually imported.*

1. A/T No. 6134 (dt. 10th June, 1963).

"So far as this A/T is concerned, the import licence was not availed of by the firm."

"2. A/T No. 6804 (dt. 25th July, 1964).

Metal	Quantity imported in M/Tons	Price
		Rs.
Copper	83.82473	6,373.97
Tin	7.256	20,269.53
Zinc	6.074	1,513.40
Lead	6.053	1,697.64

In this case the firm could not utilise 1.42 M/Tons of Tin, 1.998 M/Tons of Lead as well as Zinc they fell short of Copper. However, they could import Copper to the extent of 83.82473 M/Tons and actually consumed 87.577 M/Tons. Thus they utilised 3.75227 M/Tons of Copper from their stock.

3. A/T No. 6819 (dt. 31st August, 1964)

Metal	Quantity imported in M/Tons	Price
Copper	82.070	6,638.82
Zinc	0.93	1,566.04
Tin	6.442	20,228
Lead	16.80	2,089.15

In this case firm imported sufficient quantity of metals to produce and supply 24.3029 M/Tons of Bronze Class II and 74.888 M/Tons of Bronze Class III. They supplied 24.3029 M/Tons of Bronze Class II and 42.828 M/Tons of Bronze Class III. They committed a breach of contract, to the extent of 32 M/Tons of Class III. This

quantity of 32 M/Tons was repurchased from the same firm by placing an order on 30th January, 1966. These 32 M/Tons against a separate order were supplied in full (without any fresh import licence).

4. A/T No. 7103 (dt. 25th February, 1965).

In this case the investigation has not yet been completed. While the firm have given other documents, they have not given the copies of relevant Import Licence. They have been remained on 16th August, 1969.

5. A/No. 7277 No. (dt. 8th April, 1965).

In this case the Ministry of Law have expressed that the contract has not been concluded. However, this matter is being pursued with CCI&E for firm's disposing of the raw material imported through their assistance."

1.54. The Committee drew the attention of the witness to the fact that in respect of contracts (3) and (5) above, i.e., contracts dated 31st August, 1964 and 8th April, 1965 the firm had not used the entire quantity of the raw material imported. They enquired whether any malpractice was suspected. The witness informed the Committee that they had cause to "suspect the firm of malpractices". He added: "In fact, in another case we have deducted Rs. 3½ lakhs from their pending bills on account of similar malpractices."

1.55. The Committee enquired what action was taken in respect of contract (3) above, i.e., contract dated 31st August, 1964 where the firm supplied 32 metric tons of ingots less than what they had contracted for. The witness stated that for the quantity supplied short, a risk purchase was made from the same firm, and the extra cost due to risk purchase was recovered from the firm's bill. The firm went in for arbitration with some counter claims. "The sole Arbitrator has published a non-speaking award on 2nd January, 1969 which is reproduced below verbatim:

1. The claim of the claimants for Rs. 1,15,947 towards customs and countervailing customs duty and for Rs. 1,80,067 towards c.i.f. price difference is disallowed.

2. The claim of the Union of India for recovery of risk purchase loss and in the alternative for general damages is disallowed.
3. The Union of India shall refund to the claimants, the sum of Rs. 1,72,917 deducted by the Union of India from the bills of the claimants.
4. The claim of the claimants for interest is disallowed.
5. The parties shall bear their own costs of the arbitration proceedings.
6. The stamp duty charges payable on this award shall be borne by the Union of India.

1.56. The award was accepted as per advice of Ministry of Law. However, the amount has not yet been refunded to the firm."

1.57. The Committee enquired how; in the foregoing circumstances, action could be taken against the firm in respect of surplus imported metals retained by them. The witness stated: "I would submit that legal opinion has been given on the basis of the facts of this case but the licence was issued under certain conditions. I have with me the conditions. I will read out the conditions of licence.....I will explain this condition—No. 8. It says: "The importer will be utilising the imported material for the purpose for which he is allowed to import it', and further it says: 'If he fails to do that, it will be open to the Chief Controller of Imports and Exports to call upon him to deliver the imported stores to a person to be named by him and at a price to be indicated by him'. If he fails to do so, then he is liable for prosecution." In reply to a further question whether in the light of the legal opinion in this case, any steps were proposed to be taken to ensure that firms did not get unintended benefit by retaining unutilised raw materials imported with Government assistance, it was stated: "The remedial measures to be taken to avoid such occurrence are already provided under the terms and conditions under which import licence is issued. However, the matter also requires examination from procedural points of view and this is under consideration."

1.58. The Committee note that in respect of two contracts placed with the firm, where import assistance to the tune of Rs. 12.78 lakhs was provided by Government for import of scarce non-ferrous metals, Government "suspects" malpractices in the utilisation of the imported material. During evidence it was also stated that "similar malpractices" by the firm had occurred in "another case". In the light of this position, the Committee would like Government to investigate thoroughly how the firm utilised non-ferrous metals worth about Rs. 25 lakhs which were imported by it on the basis of import licences issued by Government in connection with the five contracts mentioned in the Audit paragraph. The Committee would like to be apprised of the results of the investigation and action taken on its findings.

1.59. On the basis of experience of this case, Committee would like Government to consider what safeguards should be built into contracts which involve import assistance so that the contracting firms do not derive unintended benefit by retaining unutilised raw materials imported for the purpose with Government assistance.

Audit paragraph

Purchase of mountain battery tents.

1.60. In response to a limited tender enquiry issued on 31st March 1967, the Director General, Supplies and Disposals, received fourteen offers of which the lowest was from firm 'A' at Rs. 326.25 per unit with delivery period of four months and the next higher from firm 'B' at Rs. 328 per unit with delivery period of six months. As firm 'A' was considered to be "heavily booked" against the then existing contracts, its offer was ignored and an acceptance of tender for 1400 tents was placed on firm 'B' on 23rd June 1967, stipulating completion of supplies by 31st January, 1968.

1.61. The contract also included a clause (known as price preference clause) that in the event of the firm's failure to adhere to the prescribed delivery period, the firm would render itself liable to pay to Government the difference between the contract rate (Rs. 328 per unit) and rate of Firm 'A' (Rs. 326.25 per unit). Such a clause is

introduced, with the consent of the tenderer to the amount, when the Department accepts a higher tender with a shorter delivery period in preference to a lower tender with longer delivery period. This case, however, was not of that kind. On that ground firm 'B' did not accept that clause and returned the acceptance of tender on 31st August 1967 stating that there was no concluded contract. The contract was thereupon cancelled in October 1967 at the firm's risk and expense and on the basis of advertised tender enquiry issued in November, 1967, the stores were later repurchased in February, 1968 from another firm 'C' at the higher rate of Rs. 371 per unit.

1.62. A demand notice for recovery of the extra cost (Rs. 60,200) was issued to firm 'B' on 7th May, 1968. The firm did not pay the dues and served Government with a legal notice (13th May 1968) disputing the validity of the above additional clause introduced by the department and the existence of a valid contract. The recovery is awaited (January 1969).

1.63. It may be mentioned that under the additional clause introduced by the department in the contract with firm 'B' the Department would have been entitled to recover only Rs. 2,450 more as penalty from firm 'B'.

[Paragraph 99, Audit Report (Civil) 1969]

1.64. The Committee pointed out that the lowest offer in this case was at Rs. 326.25 per unit with delivery period of four months. The offer which was accepted was higher, i.e., @ Rs. 328 per unit and besides the delivery period in this case was longer, i.e., six months. The Committee enquired why the lower offer was ignored. The Committee were informed: "In the case of tents, since the demand of the Defence Services is urgent it is essential that the orders are placed strictly according to the capacity of an individual unit. We have got the capacity per month figures of each unit and also the load that they are carrying on. On the basis of these figures we ignore even lower offers where we find that a firm is booked for a considerable time." The lowest tenderer in this case "had a load of 97.98 lakhs with a capacity of 10|15 lakhs per month. Therefore, the firm's offer was ignored." The next higher tenderer "offered delivery of 250 per month. Their total load was 0.90 lakh, with their monthly capacity of 0.5|1 lakh per month. On this basis the order was placed."

1.65. The Committee drew the attention of the witness to the fact that the contract contained a price preference clause. A price-preference clause generally found inclusion in a contract, if a choice arose between two acceptable offers one higher than the other, the higher one offering a more attractive delivery period. If for reasons of urgency, it became necessary to award the contract to the higher tenderer, in consideration of more attractive delivery terms, then a price-preference was included, so that in the event of the supplier delaying delivery, he could be made liable to make good to Government the difference between his rate and the rate offered by the lower tenderer, his delivery period being six months as against four months offered by the lower tenderer. The Committee enquired whether the price preference clause which was incorporated in the contract was appropriate. The Secretary, Department of Supply replied: "I don't think so." Asked further why the clause was incorporated, he stated: "It was misunderstood." He added: "Actually we have considered this matter and we are now more careful. There is no question of going to court on flimsy grounds. This matter has been considered."

1.66. The Committee were given copies of legal opinion given in this case. The opinion given was that the contract was given to the firm, in preference to the lower tenderer "not...because of earlier deliveries promised but...because of better booked capacity and therefore price preference clause would not appear to be attracted..... If there is any addition to or variation in the terms of the offer, it is not an acceptance in law. But it may constitute a counter offer..... It may be possible to argue, however, that we have no authority or price preference in this case. It is exactly for the same terms as in the tender. At the most, the argument of the firm amounts to this that it would not apply, as they have not promised earlier delivery than of:..... (firm) and as such cannot be enforced. The question of enforceability of a clause is quite different from adding or varying a clause in the offer."

1.67. The Committee enquired about the present position of recovery. They were informed as follows:

"The position is that the firm filed writ petition under Article 226 of the Constitution of India challenging imposition of Rs. 60,200 on account of risk purchase. As the contract is governed by arbitration clause, Directorate General of Supplies and Disposals filed an application under Section

34 of the Arbitration Act which was dismissed. The writ is being contested including plea of arbitration. Decision of the court is pending. The writ has not been withdrawn by the firm. Hence, the question of withdrawal by Government does not arise. However, the case is being referred to the Ministry of Law for second opinion."

1.68. The Committee are unable to understand how a price preference clause was included in the contract in this case. A clause of this nature is incorporated in a contract when a higher tender is preferred to a lower acceptable tender, in consideration of more attractive delivery terms offered by the higher tenderer. The clause then serves to protect Government's interest in the event of delay/default in delivery by the contractor. In the present case, the period of delivery offered by the higher tenderer, with whom the contract was placed, was longer compared to the lower tenderer. The representative of the Department of Supply admitted during evidence that, in these circumstances, the incorporation of the clause in the contract was not very appropriate.

1.69. The Committee, however, observe that the legal opinion given to Government is that, though the clause was not "attracted" in this case, it was still part of the contract, as the clause was part of the tender conditions which the firm accepted while submitting their tender. However, when the acceptance of tender was conveyed, the firm objected to the clause and returned the acceptance of tender, stating that there was no concluded contract. As a result, Government had to purchase the stores from alternative sources at an extra cost of Rs. 60,200; the liability for this amount has been contested by the firm in a court. The Committee would like to be apprised of the outcome of this case.

1.70. In the Committee's opinion this case indicate that the official(s) who was/were responsible for finalising the contract was ignorant of the implications of the provisions included in the contract. The Committee trust that instances of this kind will not recur.

Audit paragraph

Drawal of advances on stores not supplied

1.7. On 9th June, 1967 the Directorate of Supplies (Textiles), Bombay, placed on a registered firm a running contract for supply during July to November 1967, of lining cloth at Rs. 1.50 per metre

f.o.r. Gwalior|Nagpur. In terms of the contract, the firm could draw at its option 98 per cent advance payment on the basis of inspection and proof of despatch and the balance 2 per cent on the basis of consignee's receipt.

1.72. On 5th March, 1968, one of the consignees (Controller, Central Radio Stores Depot, New Delhi) reported that he had received from the firm on 20th February, 1968 a despatch note dated 4th October, 1967 purporting to forward a railway receipt dated 28th September, 1967 under which 11,387 metres of lining cloth had reportedly been despatched by the firm. On enquiries it transpired that the firm had not actually despatched the cloth but by quoting bogus number and date of railway receipt had obtained 98 per cent advance payment amounting to Rs. 16,739. Subsequently, it came to notice that the firm had also fraudulently obtained advance payments for supplies alleged to have been despatched to other consignees against this contract and certain other contracts placed by the Directorate. According to an assessment made by the Director General, Supplies and Disposals, (January, 1969) Rs. 2.84 lakhs were obtained by the firm without despatching the stores as show below:—

S. No.	Date of contract	Stores	Quantity (in metres)	Advance payment obtained Rs.
(i)	29th March, 1967	Long Cloth	4,200	7,262*
(ii)	9th June, 1967	Lining Cloth	1,09,580	1,61,082**
(iii)	28th December, 1967	Lining Cloth	53,186	78,184**
(iv)	29th Marh, 1967	Long Cloth	21,936	37,927
TOTAL				2,84,455

1.73. On 10th May, 1968, order for 1,27,858 metres of lining cloth which the firm had failed to supply against the contract dated 9th June, 1967 (the order was for 1.88 lakh metres with provision for variation up to 25 per cent) mentioned at (ii) above was cancelled at the firm's risk and expense and the firm was directed to refund the advances drawn (against this contract) for cloth not actually despatched. The firm has not so far (January, 1969) refunded the advances.

* 95 per cent advance.

** 98 per cent advance.

1.74. Information about the extra cost, if any, incurred by Government on repurchase of all the cloth which the firm failed to deliver against the four contracts mentioned above and its recovery from the firm is awaited (January, 1969).

1.75. No report of the alleged fraud was sent to Audit as required under the General Financial Rules of Government.

1.76. It was stated by Government (October, 1968) that the case is being referred to the Central Bureau of Investigation. They have now (January, 1969) stated that arrangements have been made to adjust the amounts due against any pending claims of the firm.

[Paragraph No. 88, Audit Report (Civil), 1969].

1.77. The Committee enquired whether the firm which committed the fraud was an agent or the actual manufacturer. The Secretary, Department of Supply stated that he was an agent of a mill. He added that the mills do not generally participate in tenders themselves. They nominate an agent who takes delivery of cloth from the mills and then supplies them. "This", he added, "is a recognised system. This was prevalent in the past and is prevailing all over the world."

1.78. The Committee asked whether the antecedents of the firm were verified by the Director General, Supplies and Disposals. The witness stated: "This firm was registered many years ago. The Income-tax clearance certificate was obtained. The banker's report was favourable. . . . Last week we got the file from the SPE and we found out that in 27 cases the supplies were completed by this firm according to delivery schedule. We were ourselves amazed to find how he acted in this case."

1.79. The Committee wanted to know how exactly the fraud was perpetrated. The Secretary, Department of Supply stated that this was done in "an ingenious way." Under the terms of the contract the firm, which was an agent, was entitled to receive 95 per cent or 98 per cent of value of stores supplied by them to the consignees on production of proof of despatch and copy of an inspection note to the Pay and Accounts Officer, Works, Housing, Supply, Bombay. The firm had in turn entered into an agreement with the mills concerned (two mills in this case) for supply of cloth to the consignees. The mills manufactured the cloth and after due inspection thereof by the inspecting staff of the Directorate of Inspection despatched the

goods by rail to "self" at the destinations where the consignees ordinarily resided. The mills sent the Railway Receipts to their bankers with instructions to release them to the firm after payment had been made by the firm. The firm did not "retire" the Railway Receipts from bankers in accordance with this procedure. On the other hand, they submitted bills to the Pay and Accounts Officer quoting the Railway Receipt Nos. and indicating that they had despatched the goods and the Railway Receipts to the consignees.

1.80. The Committee enquired how the fraud came to light. The Secretary, Department of Supply replied: "Actually one consignee made a complaint about the non-receipt of the stores. His complaint was received in the office of the Director of Supplies (Textiles), Bombay on 11th March, 1968. The firm had informed the consignee that the consignment of 11,387 metres of lining cloth had been despatched on 28-9-67 and that he had been advised of that consignment in their letter dated 4-10-67. Actually that letter was despatched much later on 17-2-68 and it was received by the consignee on 20-2-68 without the railway receipt. On this DS (Tex) became suspicious. He immediately took action and asked the P.A.O. to stop the payment."

1.81. The Committee pointed out that the Pay and Accounts Officer who was to make the payments had to send debit intimation memos to the consignees. They enquired whether these were sent in time. They were informed that there were as many as 39 debit memos involving 66 consignees. "The majority of the debit memos were issued in time." To a further question how many consignees acted on the memos, the Secretary replied: "That is the whole trouble. Only in one case the consignee reported. Otherwise none did.....I have no control over the consignees. If they do not do their duty, I am not responsible. We are providing service to indentors all over India—some may be in Assam, some may be in Bengal or Madras. We have absolutely no control over them. All that I can do is to introduce some method by which they come to know that advance payments have been made, but despatches have not been made."

1.82. The Committee enquired whether the system of advance payment was not the root cause of difficulties of the type mentioned in the Audit paragraph. The Secretary, Department of Supply replied:

"The suggestion now made was considered. In fact after examining this problem at several meetings attended by

the representatives of the Railways, DGS&D and Civil Defence, we felt that either the supplier should be asked to submit a photostat copy of the railway receipt or where photostat facilities were not available to get the copy of the railway receipt certified by a Notary Public or Justice of Peace. Then we took the Chamber of Commerce into our confidence and consulted them. They reacted very sharply to this suggestion and they said that they had been enjoying this facility for over 25 years and just for the fault of one man all of them should not be penalised. That is point No. 1.

Point number (2) was that we felt that if we had introduced this new system—although, of course, this will eliminate this kind of malpractice—it will eliminate malpractices but still it will not be a foolproof system. I personally feel that there will be no foolproof system in the world.

The third point is that balance 5 per cent 2 per cent payment, as the case may be, is made after the contracts with the suppliers are finalised. The finalisation of contracts which involves a number of factors such as claims on account of material escalation, excise duty, liquidated damages, sales tax, etc., takes quite sometime. If the facility of 95 per cent, 98 per cent advance payment is withdrawn, the suppliers will receive 100 per cent payment for the supplies only after the contracts have been finalised. This will entail great hardship to the contractors, as their 100 per cent payment amounting to lakhs of rupees will be held up for several months and the immediate result would be that the prices against future tenders would tend to go up substantially.

Orders were placed by the DGS&D worth Rs. 5266 crores during the last 22 years. Against this, the firms got away with Rs. 2.23 crores by way of advance payment through fraudulent means. You are aware that there is a notorious case of UPCC which has been gone into by the PAC. The advance amount obtained by the UPCC is also included in Rs. 2.23 crores. In that case we allowed to the payment to be made on inspection for certain special reasons. One of them was that we wanted to step up the production of road rollers but the party got away with Rs. 1.96 crores. If you take that cost also into account, the percentage of

fraudulent payment to the total purchases made during the last 22 years works out to 0.04%. And if you take out the UPCC case, this 0.04% will come down to 0.007%. Taking all these factors into account, we felt that we should not stop this system of advance payments to the suppliers. We were thinking of asking the railways to give us a duplicate copy of the railway receipt—one copy being marked 'non-negotiable'. This was taken up at the highest level with the then Minister of Railways. But the Railways expressed their inability to accept this suggestion because they said that railway receipts were treated as documents having money value. They were not prepared to issue the receipts in duplicate. However, that is being done in the case of Indian Airlines. When the Ministry was not prepared to accept this, I made another suggestion to the Chairman of the Railway Board for giving a copy (duplicate) of the forwarding note in which the number and date of the Railway Receipt and the name of the consignee may be mentioned. Even that they were not prepared to give.

Now, the position is that we have not yet got out of this situation. And wherever there are any loopholes we have tried to plug them. We have come to the conclusion that it is wrong for us to take away the advance payment facilities." He added: "In the course of 22 years we have experienced only 36 such cases. When we find that the position is really becoming alarming we shall take adequate steps. At the moment, we have come to the conclusion, after proper analysis has been done, that it is not called for."

1.83. The Committee drew attention to their recommendation in para 2.26 of 28th Report (Fourth Lok Sabha) regarding revision of procedure to ensure that a supplier does not get away with advance payment without actually despatching the goods after inspection. In reply to this recommendation it had been stated by Government that "remedial measures...are under consideration" in consultation with Ministry of Railways. The Committee enquired what the present position was. The witness replied: "We have given this matter the top-most priority and taken up this matter at the highest possible level. We have not been able to persuade the Railway Ministry to issue duplicate R/Rs." In a note the Department of Supply have further explained the position as under:

1.84. "The Government have adopted the following safeguards for preventing contractors from obtaining payment fraudulently by quoting fictitious|bogus R|R No. etc. :—

- (a) Sub-clause 9 of clause 14 of the conditions of contract (DGS&D-68-Revised) has been amended specifying that the railway receipt|consignee's note or bill of lading, if any, should be drawn in the name of the consignee or the interim consignee, as the case may be, and should be sent to him.
- (b) Instructions have been issued in Office Order No. 56 dated 14-6-1967 to the Purchase Officers that in future A|Ts, the consignees should be requested to send an intimation to the Purchase Organisation immediately on receipt of stores giving particulars of the A|T No. and date, date of despatch of stores by the contractor with railway receipt number and date and date of actual receipt by the consignee along with the quantity received.
- (c) In case of progress payments, in addition to test checks of railway receipts and transport documents, the progress field staff will also test check the actual receipt of stores by the consignee. This will be done by checking consignee's receipts, sending letter to consignee to certify the receipt and in important cases even by visits to the consignee's premises. Office Order No. 86 dated 14-8-67 has been issued in this regard.
- (d) Consignees have been asked *vide* Deptt. of Supply O.M. No. PI-9(9)|67, dated 11-4-68 to promptly report to the Pay and Accounts Officer concerned, with a copy to the DGS&D, any cases of shortages|discrepancies found in the stores received by them.
- (e) Instructions have been issued that all serious complaints received from consignee's and other malpractices, fraud etc. reported by them should immediately be brought to the notice of and also periodically reviewed by the senior officers so as to ensure prompt and proper action, *vide* U.O. No. CDN-3|1(21)|II|68 dated 24-12-68.
- (f) It has been decided *vide* Department of Supply O.M. No. PIII-9(9)|67 dated 2-8-69 that the Pay and Accounts

Officer would, immediately after making payment of advance bills, send a registered letter to the consignee asking him to confirm receipt in full or the extent of short supply of stores as indicated in the railway receipt, within 45 days of receipt of the letter.

(g) It has been decided vide Department of Supply OM. No. P-III9(2)|69, dated 16-10-69 that the contractor should incorporate a certificate on the bill form itself to the effect that the railway receipt No. and date quoted in the bill is genuine and correct. The form of the certificate to be incorporated in the bill is as under:—

***"I have personally examined and verified and do hereby certify that the goods in respect of which the payment is being claimed have been actually despatched by me|us under R|R No. B|L No.|Air Consignee which is genuine and mentioned in the bill and that I held myself personally responsible for the correctness of this statement.

I further certify that the above mentioned R|R No.|B.L. No.|Air Consignment Note No.|Postal Receipt No. has been forwarded to the consignee mentioned in the contract under Registered Post, acknowledgement due'.

1.85. As a further measure of safeguard, it has been proposed that the suppliers' bills for advance payment should be accompanied by a duplicate of the forwarding note (which they submit to the railways at the time of tendering the stores for booking) with particulars of R|R number and date recorded thereon by the Railway Booking authorities. The matter was taken up with the Railway Board and they have now agreed to the issue of forwarding notes in duplicate subject to certain conditions. The matter is being examined further and the scheme will be finalised shortly."

1.86. The Committee asked about the outcome of the investigation in this case. The representative of the C.B.I. stated that four complaints were received from the Department of Supply. After investigations, charge-sheets were filed in respect of two of the four cases. In a note, the Committee have been informed that charge-sheets had been filed in the other two cases also. In all 7 charge-sheets had been filed. The Committee were also informed during evidence that a partner of the firm was arrested but subsequently released on bail.

1.87. The Committee wanted to know the amount due from the firm and action taken for recovery. The following position has been brought to their notice in this regard:

"The total recovery due from the firm is as follows:

Fraudulent Payment drawn

	Rs.
Running Contract No. 556	1,60,117 ×
Running Contract No. 1334	78,581(a)
A/T No. 338	37,926
A/T No. 339	7,262

Risk Purchase Recovery

Running Contract No. 556	891
Running Contract No. 134 }	Nil
A/T Nos. 338 and 339 }	

General Damages :

A/T No. 339	380
TOTAL	<u>2,85,157(b)</u>

× Rs. 1,61,172 }	According to Audit.
(a) Rs. 78,181 }	
(b) Rs. 2,85,812 }	

1.88. The Pay and Accounts Officer, Bombay, has already been advised to effect recoveries from the pending bills of the firm. A sum of Rs. 14,082/- has been recovered so far. An amount of Rs. 56,627/- held as security deposit is also available for adjustment against recoveries, two amounts of Rs. 2,193 and Rs. 869 have been adjusted by the Pay and Accounts Officer, leaving a balance of Rs. 53,765 which is available at present."

1.89. In reply to a question what assets the firm was in possession of, it was stated: "No information is available regarding the assets of the firm."

1.90. The Committee consider it unfortunate that a firm "fraudulently obtained" a advance payments amounting to Rs. 2:84 lakhs for supplies which were not effected by it. The payments were made on the basis of claims which bore reference to Railway Receipts under which the stores were purported to have been despatched, but, on investigation, it turned out that the Railway Receipts had not been sent by the firm to the consignees to enable them to take delivery of the stores. The matter came to notice, when 1 out of 66 consignees defrauded complained.

This is not the only case which has come to the notice of the Committee. In their First Report (Fourth Lok Sabha), the Committee had commented on a case where a firm had fraudulently obtained advance payments amounting to about Rs. 1·85 crores against supplies of road-rollers which were not made by them.

1.91. The Committee appreciate that, while the magnitude of the fraud involved in these cases may be large it does not warrant the stoppage of advance payment facilities which are being extended to firms. The representative of the Department of Supply pointed out to the Committee that, during the last 22 years, there have been "only 36 cases" of this type, involving a total sum of Rs. 2·23 crores, which "works out to 0.04 per cent of the total purchases made. But the Committee do feel that the procedures evolved on the basis of these cases need to be implemented promptly. How tardy the implementation of the procedures has been would be evident from the facts of the present case. The procedure evolved provides for the Pay and Accounts Officer sending a debit intimation memo" after making payments to a firm. There were as many as 66 consignees, who received these intimations in this case, but only one complained and it was his complaint which, on investigation, brought to light this fraud. In the Committee's opinion, this suggests that neither the Directorate General of Supplies and Disposals nor the consignee progressed the contract in this case with vigilance or alertness. Had they done that, the fraud might well have come to light earlier. The Committee hope that instructions would be issued to ensure that the revised procedures evolved to stop cases of fraudulent payments of this type would be strictly enforced. The Committee would also like Government to investigate the circumstances under which the consignees in this case failed to progress the contracts and to take suitable action thereafter.

1.92. The Committee note that in the present case, court proceedings have been initiated, on the basis of investigations conducted by the Central Bureau of Investigation. The Committee would like to be apprised of the outcome of the proceedings, as also the progress made in the recovery of payments from the firm.

1.93. According to Rule 16 of the General Financial Rules of the Central Government losses, fraud etc. noticed by government officers have to be 'immediately reported' to the Audit. In this case, fraud amounting to Rs. 2·84 lakhs was not brought to the

notice of Audit. The Committee would like to be apprised of the reasons for not doing so and the action taken against the defaulting officers.

Audit paragraph

Purchase of chassis

1.94. In October 1965 the Director General, Supplies and Disposals, placed on a firm an acceptance of tender for supply of 58 Ashok Leyland Comet chassis at a total cost of Rs. 27.18 lakhs; the contract price was subject to variation by way of increase or decrease in price as fixed by the Department of Industrial Development. One of the components, viz., "power take-off", needed import for which, according to the contract, import licence was to be issued to the firm. Delivery of 12 chassis per month (minimum) was to commence after 3 months from the date of receipt of import licence

1.95. An import recommendation certificate was issued by the Director General on 19th October 1965 but, owing to protracted correspondence with the indenter on whether the sanction to foreign exchange issued in July 1964 was still operative, import licence was issued to the firm only on 14th February 1967 (i.e., after nearly 16 months). Also, on the basis of discussions held in June 1966, the firm was asked (November 1966) to make some modifications in the chassis. The firm supplied 22 chassis from February 1966 to October 1966 and the balance 36 by June 1967 with "power take-off" units already in stock/imported against its own licences. To cover the delay in supplies piecemeal extensions of delivery period were granted to the firm.

1.96. On account of increases in price allowed by the Department of Industrial Development from November and December 1966, the delay in supply of the 36 chassis after October 1966 resulted in extra expenditure of Rs. 1.03 lakhs.

[Paragraph 98, Audit Report (Civil) 1969]

1.97. The Committee drew the attention of the witness to the fact that, though the import recommendation certificate (IRC) was issued by the Director General, Supplies and Disposals on 19th October, 1965, there was a delay of about 16 months in the issue of import licence, resulting in an extra expenditure of Rs. 1.03 lakhs. The Committee enquired why the issue was not sorted out by personal discussions amongst the officials of the Ministries concerned. The witness stated that in the month of July, 1964, an indent for the supply of Ashok Leyland Comet chassis was received. The indenter had

asked for aircraft refuellers mounted on Ashok Leyland chassis. The stores consisted of two items—one was refuellers and the other was chassis. The question of refuellers was first taken up, as in the case of chassis, the body building contract had to be framed out. The Department could farm out the contract only in August, 1965. By that time the period of 12 months for which the sanction for foreign exchange issued in July, 1964 was valid had expired.

1.98. The Committee enquired why there was delay in placing the body building contract for chassis. The witness stated that according to the indent the refuellers mounted on chassis had to be supplied. "If we process the indent for chassis we would have to tell the supplier to whom chassis will have to be delivered, where and at what time. Until these essential details were settled, order for chassis would not be settled."

1.99. The Committee were informed that when the Import Recommendation Certificate was issued, the import licence had to be issued by the Chief Controller of Imports and Exports. So the Import Recommendation Certificate was sent to the firm. They sent in their application which was addressed to the Chief Controller of Imports and Exports. The Chief Controller of Imports and Exports returned the application in November, 1965 stating "recently Ministry of Finance (Economic Affairs Department) has stated that foreign exchange remains valid for one year after placing orders. No relaxation was made in the case of Defence indents." The Director General, Supplies and Disposals was therefore advised to get the foreign exchange sanction revalidated. The indenter, however, maintained that as the indent was placed within six months of the issue of the letter sanctioning the foreign exchange it was not necessary to revalidate it. The practice as it obtained till then was that "in Defence cases when the indent had been placed on DGS & D by Defence Authorities within 6 months from the date of release of foreign exchange, there was no time limit for placement of contract. This procedure was based on Office Order No. 68 dated 21st June, 1962 issued by Director General, Supplies and Disposals on the advice received from Ministry of Works, Housing & Supply (after discussion with Ministry of Finance)." A reference was made to the Department of Economic Affairs for clarification of the position. The application of the firm was sent to the Chief Controller of Imports and Exports. He refused to take any action on that. The Department of Economic Affairs reviewed the whole position and came to the conclusion (April, 1966) that in the case of Defence orders also, it was necessary that the sanction order must be revalidated. It took some time for the Defence Ministry to get the sanction from the Economic Affairs. It came some

time in November, 1966 and on that basis an Import Recommendation Certificate was issued. The witness added: "This obviously was a matter which could not be discussed among the officers concerned because here the question of policy was involved and so it took time."

1.100. Asked if it was the responsibility of the indenter to have arranged for the foreign exchange, the representative from Department of Supply stated that whenever an indent was received by the Director General, Supplies and Disposals from any department, it was the responsibility of the indenter to get the foreign exchange sanctioned.

1.101. The Committee drew attention of the witness to the recommendation contained in para 5.86 of their Sixty-Ninth Report (Fourth Lok Sabha) suggesting that procedures should be devised for eliminating delays in the release of foreign exchange for emergency operational works and enquired what measures have since been taken in the matter. The Director General of Supplies and disposals stated: "We have sent a circular making it absolutely clear that we would not accept the indent unless accompanied with a valid foreign exchange sanction issued by the Department of Economic Affairs. In the case of some important indentors we have liaison officers right in the Directorate General, Supplies and Disposals with whom we take up the matter . . . In the case of operational and emergent indents, we do start processing before the foreign exchange sanction is received . . . We have made it absolutely clear now that the foreign exchange sanction is made available within a month or a month and a half of our starting the processing of their indent."

1.102. The Committee observe that a series of delays occurred in this case. The indent, with prior foreign exchange sanction, was received in the Directorate General of Supplies and Disposals in July, 1964. The Directorate took over a year to conclude the contract for the component items in the indent and by the time this was done, the foreign exchange sanctioned valid for a year, had lapsed. As a result, the firm could not be provided with the requisite import licence immediately after conclusion of the contract in October, 1965. The indenting authority was apparently not aware of the provisions of the latest orders relating to validity of foreign exchange sanctions and as a result further time was lost in correspondence till in April, 1966 it was settled that revalidation of the old sanction for foreign exchange was necessary. The revalidation took a further period of six months and by the time the firm could be provided with import licence (February, 1967), the price of

the store had "escalated" in terms of the contract by Rs. 1.03 lakhs. What is more regrettable is that delays of this order occurred in processing a case relating to a requirement of the Defence Services.

1.103. The Committee have elsewhere in this report stressed the need to ensure that import assistance in terms of contracts is expeditiously made available to contracting parties. In regard to Defence requirements, the Committee have, in para 5.86 of their Sixty-Ninth Report (Fourth Lok Sabha), emphasised the need for suitable procedures to eliminate delay in release of foreign exchange. The Committee hope that the matter will be kept continuously under review, so that bottlenecks at the stage of release of foreign exchange and issue of import licences do not adversely affect Government's interest *vis-a-vis* contracting parties.

Audit paragraph

Purchase of tents

1.104. Against an advertised tender enquiry for purchase of "Tents 40 lbs. MK-2" issued by the Director General, Supplies and Disposals, in October 1966, the tenders received were opened on 13th December, 1966 and the offer of firm 'A' (a small scale unit) at Rs. 81 per unit for one of the items was the lowest considered acceptable. The firm's offer was valid upto 28th February, 1967 which later it agreed to extend upto 30th April, 1967.

1.105. On 29th March, 1967, a month after expiry of the date upto which the firm's offer was originally valid, a report on the capacity of the firm was called for from the National Small Industries Corporation; the Corporation furnished the report on 25th April, 1967. Meanwhile, the firm increased its rate to Rs. 87.50 per unit (written as Rs. 87 per unit in words). As the revised rate was still the lowest considered acceptable, an advance order was placed on the firm on 29th April, 1967 stipulating the rate as Rs. 87.50 per unit. On the same day, the Director General received a letter (dated 24th April, 1967) from the firm requesting amendment in the tendered rate quoted as Rs. 87.50 (due to a typographical error) to Rs. 87 per unit. This was followed by another letter dated 30th April, 1967 received by the Director General on 4th May, 1967 stating that its rate might be treated as Rs. 87.50 per unit on the ground that the rate of Rs. 87 per unit had been quoted by mistake. A formal acceptance of tender was issued to the firm on 10th May, 1967 stipulating the rate of Rs. 87 per unit. (The total value of stores in words as indicated in the Acceptance of Tender was, however, still based on the rate of Rs. 87.50 per unit). The firm disputed this. At this stage, the Ministry of Law

expressed the view (29th June, 1967) that "there would seem to be no alternative except to proceed on the basis that the firm is entitled to payment of Rs. 87.50". The matter was subsequently discussed with the firm with a view to persuading it to accept the rate of Rs. 87 per unit. The firm did not agree; and on 19th August, 1967 returned the acceptance of tender.

1.106. According to a legal opinion obtained in September, 1967, there was no concluded contract with the defaulting firm as the quantity and the rate of delivery stipulated in the contract were different from those offered by the firm originally in its tender. Consequently, the contract was cancelled in December, 1967 without financial repercussions and the stores were purchased in January, 1968 at higher rates. The repurchase entailed extra expenditure of Rs. 88,400 resulting from:

- (i) delay in taking a purchase decision leading to firm 'A' increasing its tendered rate from Rs. 81 per unit to Rs. 87.50 per unit (Rs. 20,000); and
- (ii) the rate of Rs. 87.50 offered by the firm not having been availed of (Rs. 68,400).

1.107. Government stated (October, 1968) that the Director General has been asked to fix responsibility for the irregularities and to take effective steps for avoiding recurrence of such cases.

[Paragraph No. 95, Audit Report (Civil), 1969]

1.108. The Committee enquired whether it was true that the firm with whom negotiations were conducted in this case had been found to have forged signatures on a demand draft issued in favour of another firm in respect of another contract. The Director General, Supplies and Disposals, replied that it was so. To a further question when this matter came to notice, the witness replied that "the first note recorded on the file on the subject is dated 17th May, 1967". According to further information furnished by the Department on this case, the firm "fraudulently received" a draft dated 28th February, 1964 for Rs. 10,633 issued in favour of another firm "by forging endorsement of the payee in their favour." The matter was reported to the Special Police Establishment and pending investigation, it was decided on 25th May, 1967 to suspend business dealings with them. The firm was "not registered with the Director General, Supplies and Disposals".

1.109. The Committee enquired why, when business dealings had been suspended with the firm in May, 1967, the Director General, Supplies and Disposals continued negotiations with the firm in this

case till August, 1967. The Director General, Supplies and Disposals stated that the file on the case did not indicate whether the fact of suspension of business "was within the knowledge of the two officers" concerned with the case. He added that the advance letter of acceptance was issued to the firm on 29th April, 1967, that is, "before business dealings were suspended". Asked whether this was tantamount to a contract, he replied: "Advance order concludes the contract." The Committee drew the attention of the witness to the fact that the legal opinion in this case in September, 1967 was that there was no concluded contract. They enquired why, even if advance order of acceptance had been issued, the Department did not seek legal opinion to ascertain whether, in view of the malpractice that had come to light, it was possible to stop further dealings with the firm. The Director General, Supplies and Disposals replied: "The perusal of the file does not show that the matter was examined from that point of view. In my feeling, after the advance A/T has been placed, the Department must proceed on the assumption that it is a valid contract." The Secretary, Department of Supplies intervened at this stage to say: "I have seen this case very carefully. I find many lapses which have been committed in this case and the position is indefensible to my mind. I came to the conclusion that in this case the office has been very negligent and did not pay adequate attention to the requirements of the case. As you have seen Rs. 87.50 was not properly shown in words and figures in the contract and nobody took notice of it. There was so much delay in calling for capacity report and all that. I think the position is indefensible and I have no excuse."

1.110. The Committee enquired whether action had been taken against the officers concerned. The Secretary, Department of Supply stated that action had been taken against the officials concerned. They had been warned/censured and an entry had been made in the character roll of one of the officials.

1.111. The Committee pointed out that there were other aspects of the case. There was delay in coming to a decision on the tender and delay in calling for reports on the capacity of the firm. In this connection they drew attention to their observations in para 1.22 of their Fifty-Seventh Report (Fourth Lok Sabha) where they had desired that capacity reports on tendering firms should be promptly obtained. The Secretary, Department of Supply replied: "We have taken a series of steps based on this case and there will be no delay."

1.112. The Committee pointed out that according to the Standardised Code, the order of suspension of business dealings with a firm is only an interim step and not a penalty. A penalty is imposed after

a final decision is taken on the question of action to be taken against a firm. The Committee enquired whether a final decision had been taken in this case. They were told that "final action will be taken against the firm on receipt of the report from the SPE which is still awaited. The matter is being pursued with the SPE."

1.113. The Committee are surprised to find that negotiations were conducted by the Director General, Supplies and Disposals with the firm in connection with this contract, even though business dealings with the firm had been earlier suspended by his office for its involvement in a case of forgery. It was stated that the officials who dealt with the case were not aware that business dealings with the firm had been suspended, but, as was conceded during evidence, this is an "indefensible" position. The Committee note that action has been taken against the officials for this and other failures mentioned in the preceding Section of the Report. To obviate recurrence of cases of this type, the Committee would like Government to consider whether all officers concluding contracts on behalf of Government should be asked to maintain an upto-date list of firms with whom dealings have been banned/suspended etc., if instructions to this effect do not already exist.

1.114. The Committee observe that the Special Police Establishment is investigating the case of forgery in which the firm is suspected to be involved and that final action against the firm will be taken after the results of investigation become known. The Committee would like to be apprised of the further developments in this regard.

1.115. The Committee also feel that there was delay in this case in coming to a decision on the tenders and in taking other preliminary action connected therewith such as calling for reports on the capacity of the tenderers. The Committee note the assurance of the Department that "a series of steps has been taken based on this case and there will be no delay". The Committee trust that these procedures will be strictly adhered to in the interest of expeditious conclusion of contracts and their smooth execution.

Audit paragraph

Extra Expenditure due to defective wording of a contract

1.116. On the basis of a limited tender enquiry followed by negotiations, the Director General, Supplies and Disposals, placed on 21st April, 1964, two orders on firms 'A' and 'B' for supply of 2 lakh "magazines" each at Rs. 5.05 per magazine.

1.117. The delivery period in the tender of firm 'A' was as under:

"After the placement of your firm order, we shall take up the manufacture of necessary toolings. We shall require about 4 months' time for the manufacture of special toolings. We hope during the time we manufacture toolings, it will be possible for us to obtain the necessary raw materials through your assistance. After the manufacture of the toolings we shall submit samples in about 4 weeks time. After the approval of the samples in all respects, we shall be able to give delivery @ 25,000 pieces per month, as required by you."

However, the contract placed on firm 'A' stipulated delivery as under:

"Supplies will commence within 5 months after the date of receipt of A/T @ 25,000 pieces per month."

1.118. The contract also stipulated issue of (a) import licences for imported raw materials and (b) essentiality certificate for indigenous raw materials. While acknowledging receipt of the contract on 29th April, 1964, the firm disputed the wording of the delivery period whereupon on 18th July, 1964 the delivery clause was amended to read as under:—

"Supplies will commence within 5 months of the date of receipt of the A/T at 25,000 pieces per month subject to receipt of all raw materials by you within 4 months from the date of the A/T."

1.119. The firm did not accept even the revised delivery period and on 5th August, 1964, requested that rate of supply should be reduced from 25,000 to 6,000 per month. As the needs of the indentor were urgent, the possibility of making alternative arrangements (for a part of the quantity) by reducing the number on order with the firm was explored, but the firm did not agree unless the contract price was increased to Rs. 7.50 each. According to a legal advice obtained in August, 1964, since the delivery period in the contract did not conform with the delivery period offered by the firm in its tender there was no concluded contract. In December, 1964 the order with the firm was reduced to 1 lakh magazines and in January, 1965 the contract price was also increased to Rs. 6.50 each. No agreed terms of delivery were stipulated even at that stage. After negotiations, an order for the balance 1 lakh magazines was placed on another firm 'C' on 31st October, 1964 at Rs. 7.85 each.

1.120. The firm 'A' did not supply any magazines even till October, 1966. The order could not be cancelled at the firm's risk and expense even then as, according to the Ministry of Law, the legal lacuna viz., non-existence of a concluded contract, still existed. In view of this, the delivery period was extended further (on 14th April, 1967) upto 29th February, 1968, and the number ordered was also reduced to 90,000; the shortfall viz., 10,000, was covered on firm 'B' at Rs. 5.05 each.

1.121. The defective drafting of the contract in this manner resulted in extra expenditure of Rs. 4.10 lakhs as mentioned below:—

	Amount (in lakhs of Rs)
(i) One lakh magazines ordered on firm 'C' at an extra cost of Rs. 2.80 per piece	2.80
(ii) 90,000 pieces purchased from firm 'A' at extra cost of Rs. 1.45 per piece	1.30

[Paragraph 89 of Audit Report (Civil) 1969.]

1.122. The Committee enquired why only limited tenders and not open tenders were called for. The Secretary, Department of Supply stated that the item in question was a developmental one, required for Defence purposes. The capacity of firms to produce a developmental item like armament stores being limited, the practice was to call for a limited tender enquiry only. These firms were recommended by Director General, Technical Development.

1.123. The Committee drew attention of the witness to the fact that firm 'A' had imposed various conditions in their tender and asked whether other tenders also had stipulated likewise. The Committee also enquired whether the firms 'B' and 'C' supplied the stores within the contract period. The witness stated that raw material assistance was given to everybody as per their requests and a period of six months was also agreed to by the Department to produce sample, tooling etc. As regards the supply of items by firms 'B' and 'C', the witness stated that extensions of time were given before they delivered the goods.

1.124. The Committee pointed out that firm 'A' kept varying its conditions of supply from time to time. The Committee enquired whether its capacity was verified before orders were placed. The

Department have stated: "Firm 'A' was registered with the Director General, Supplies and Disposals for various Press Steel items like doors, cupboards, safes, furniture etc. Before placement of this order, they also executed one order for fuses. In view of this and also as the firm was a renowned one, the Director (Planning and Development) who was specifically appointed for the developmental work of civil armament items in the civil sector was satisfied about the capability of the firm to produce this now armament item. Accordingly, tender enquiry was sent to this firm. As regards the other two firms.... their names were recommended by the Director General, Technical Development. In the circumstances, it was not thought necessary to call for a capacity report in respect of these three firms."

1.125. Pointing out that there was variation in the rates quoted by the three firms, the Committee enquired whether the Department was satisfied with the reasonableness of such variation for the supply of the same armament store. The witness stated: "So far as prices are concerned, these things are developmental items which involve lot of difficulties. When the firms quote, even they do not realise how much is going to be the actual cost... Indentor's estimate for this particular type was Rs. 9.60 as against it, order was placed at Rs. 5.05."

1.126. The Committee pointed out that firm A's rate as ultimately agreed to was Rs. 6.50 per unit, firm B's rate was Rs. 5.05 per unit and firm C's Rs. 7.85 per unit. Firm 'A' was to supply 2,00,000 Nos. as against which they supplied 90,000 Nos. The balance was off-loaded to the extent of 1,00,000 to firm 'C' and 10,000 to firm 'B'. They enquired why the entire quantity was not off-loaded to firm 'B'. The witness stated: "Off-loading took place in October, 1964. At that particular time in October, 1964.... (firm 'B') did not commence making any supplies. Therefore, we were not sure whether ... (firm 'B') will come up in production... We knew only... (firm 'C') was in production./ Their capacity was available. So we said either we off-load—(firm 'A') completely and place the entire order with... (firm 'C') or else off-load half the quantity and negotiate with.... (firm 'A') Firm 'C' said that they were not interested. Therefore we thought we should keep... (firm 'C') going out at the same time negotiate with.... (firm 'A')."

1.127. The Committee enquired why the Department was so much interested in nurturing firm 'A'. The Secretary, Department of Supply replied: "Our policy which the Defence Ministry have also endorsed is that we have to tap certain sources and develop

capacity in the country to fall back upon in the time of emergency. So, we wanted a third source to be available." In a note on the question of policy being followed in the matter of development of sources of supply for armament items, the Department of Supply have stated as follows:

"That indigenous sources of supply should be developed generally for meeting Government requirements of various types of stores was highlighted in the Ministry of Works, Housing and Supply's Office Memo. No. Pur-19(6)/20 dated the 14th February, 1955. This Office Memo. speaks of various types of assistance, including financial assistance, to be given in respect of developmental indents and envisages deviations from the normal procedure for the purchase of stores.

Paragraph 95 of the Manual of Office Procedure of the DGS&D (1961 Edition) spelt out the procedures etc. for the development of the manufacture in the country of stores which were hitherto being imported.

In the wake of the Chinese Aggression in the autumn of 1962, a greater emphasis naturally came to be given to the development of civil armament stores through indigenous sources of supply. A Civil Armament Directorate was, therefore, opened in the Directorate General of Supplies and Disposals in February, 1963 which started functioning from May, 1963 and, seven months later, in December 1963 the DGS&D received this particular operational indent for the supply of four lakhs of magazines. The supply of magazines for small arms came up for discussion at a meeting of the Munitions Committee in August, 1964 when the Ministry of Defence made it clear that the delay in the supply of magazines would make the supply of weapons ineffective. They stressed the point that bulk orders should be placed on firms which had handled educational orders for those stores. This meeting also discussed in general the procedures to be adopted in placing orders on civil trade in respect of items which had not been fully developed. It was recognised that unless bulk orders were placed, the firms would not be keen on undertaking the development of new items. It was suggested that contracts which call for development work as well as bulk production should provide clauses under which bulk orders would be placed on the firms after

completion of the development work and also that it would be possible to withdraw the intention to place bulk orders if the firms lagged very much behind in completing the development work. This would enable the distribution of bulk orders in such a way that the firms which completed the development work earlier could hope for obtaining a larger order.

In October, 1964, a Committee was set up to undertake a detailed study of the procedures to be followed in regard to the processing of demands for developmental items. The Committee completed its report on 25.5.65, based on which the Ministry of Supply, Technical Development and Materials Planning issued orders on the development of indigenous capacity for the manufacture of stores required by Defence indentors.

As regards the procedure prescribed in respect of developmental items in the matter of extension of delivery periods and cancellation of contracts without financial repercussions, attention is drawn to paragraph 6(e)* of the Office Memo. dated 20th July, 1966 and to DGS&D O.M. dt. 28.4.67** Para 11(ix) of DGS&D Office Order No. 20 dated 1-1-1969, reproduced below is also relevant in this connection:—

'In case of developmental orders placed for development of indigenous capacity for the manufacture of imported

* 6(e) As regards balance 20% of the second year's requirements, limited tender enquiry to a wider circle of firms, may be issued and orders placed on new firm provided they are suitable in all respects and are willing to accept educational orders for small quantities. These educational orders should contain provisions for more orders after successful completion of the educational order and for cancellation of the order without financial repercussions on either side if the firms are unable to complete the order within a period of 6-8 months. In the case of failure of the new firms to complete the educational orders, the Director General, Supplies and Disposals should ensure that the balance 20% is also covered on the established sources, so that their production capacity is availed of without interruption in their production programme. Suitable time limits should also be fixed in the educational order for the development/production of the prototype and the commencement of bulk supplies should be so adjusted as to ensure that they materialise within the delivery period mentioned in the indent.

** Instructions already exist that for developmental stores, with a view to create more capacity and stimulate competition against future demands, educational orders may be placed on new firms, provided they are found suitable in all respects and are willing to accept educational orders for small quantities. It has been further provided that such contracts could be cancelled without financial repercussions on either side if the firms are unable to complete the order within a period of 6 to 8 months.

store, the extension in delivery period should be sympathetically liquidated damages'."

1.128. The Committee pointed out that in January, 1965, the contract price of firm 'A' was increased to Rs. 6.50 each, while originally in the contract placed in April, 1964 with the same firm, it was only Rs. 5.05. The Committee asked on what basis this price was agreed to. The Joint Secretary, Department of Supply stated that the Munitions Committee dealt with the procedure of handling civil armament items. He further stated: "In August we saw that the capacity of... (firm 'C') was lying idle and it appeared that decision was taken on 18th August, 1964 at a very high level that... (firm 'A') should be off-loaded to the extent of 1 lakh and order placed on... (firm 'C') . Since that was received they naturally came up saying they had quoted Rs. 5.05 for 2 lakh order. Now things like tooling etc. are going up, overheads are going up. We, at that stage, brought in the Chief Cost Account Officer... The Chief Cost Accounts Officer certified that they were asking for a reasonable rate. First it was 7.50 and we succeeded in bringing it down to 6.50 after a great deal of pressure."

1.129. The Committee desired to be furnished with the legal opinion that the contract could not be cancelled at the risk and expense of firm 'A'. The following are extracts from the statement of the case and the legal opinion given:

Statement of case:

"At the time of tendering for this store on 1.4.64 M/s.... (firm 'A') have indicated the delivery time as under:

'After the placement of your firm orders we shall take up the manufacture of necessary toolings. We shall require about 4 months' time for the manufacture of special toolings. We hope during the time we manufacture toolings, it will be possible for us to obtain the necessary raw materials through your assistance. After the manufacture of the toolings we shall submit samples in about 4 weeks' time. After the approval of the samples in all respects we shall be able to give delivery at the rate of 25,000 pieces per month as required by you'.

While issuing the Acceptance of Tender on 21.4.64, the Director General, Supplies and Disposals has changed the wording as under:

'Supplies will commence within 5 months after the date of receipt of A/T @ 25,000 pieces per month'.

M/s... (firm 'A') did not accept the change effected by the Director General, Supplies and Disposals and wrote back on 29.4.64 asking them to amend clause No. 9 of the Acceptance of Tender to incorporate the original condition that if the company did not receive all the new materials within 4 months (i.e. before 25.8.64) the delivery time would be refixed suitably taking into consideration the delay that might occur in obtaining all the raw materials. On 18th July, 1964, the Director General, Supplies and Disposals amended the delivery time as under:

'Supplies will commence within 5 months of the date of receipt of Acceptance of Tender at 25,000 nos. per month subject to receipt of all materials by you within 4 months from the date of the Acceptance of Tender'.

Or 22nd July, 1964, the firm wrote to the Director General, Supplies and Disposals asking them to cancel the amendment of 18th July, 1964 and incorporate the delivery time as shown in their letter of 1.4.64. The firm wanted clause No. 9 of the Acceptance of Tender to be amended as follows:

'We shall complete manufacture of necessary toolings within four months. After completion of toolings, samples will be submitted in four weeks. After approval of the samples, delivery will commence at the rate of 25,000 Nos. Magazines per month. This delivery time will be subject to our receiving full quantity of raw materials by the time we complete the manufacture of toolings'.

The above delivery condition is slightly at variance in regard to:

(i) delivery will commence from the date they received the amendment letter as above and (ii) delivery will be subject to the company receiving full quantity of raw materials by the time they complete the manufacture of toolings.

M/s... (firm 'A') have come forward (their letter dated 5th Aug., 1964) with their difficulties to undertake the jobs and drastically al-

tered the delivery schedule and the quantum of supply i.e., supplies will commence with 9 months from the date of receipt of the original acceptance of Tender at the rate of 6,000 Nos. per month subject to the receipt of all raw materials by them within seven months from 25.4.1964.

Had Director General, Supplies and Disposals stipulated in the original Acceptance of Tender the time of delivery as indicated by M/s... (firm 'A') in their letter of 1.4.64 we would have had a case for risk purchase of the store from other parties at the cost of... (firm 'A').

Before we take any further action, it would be better to obtain the opinion of the Law Ministry as to whether the cancellation of the Acceptance of Tender or reduction in the quantity can be effected at..... (firm's) risk and cost, before we express our views on this matter."

Legal opinion

"The delivery period stipulated for in the Acceptance of Tender was not in conformity with the Tender Quotation of the firm. In the circumstances the Acceptance of Tender was not accepted by the firm. as is clear from their letter dated 29.4.64. The subsequent A/L dated 18.8.64 also did not provide for delivery period as desired by the firm. This was also not accepted as is clear from their letter dated 22.8.64. In the circumstances a concluded contract cannot be said to have come into effect at any stage. There can, therefore, be no question of cancelling the Acceptance of Tender or reducing the quantity and waying a risk purchase at their risk and cost."

1.130. The Committee observe that the firm in this case had initially undertaken to supply 2,00,000 Nos. of a particularly store at Rs. 5.05 per unit. Ultimately what they supplied after a protracted period of delay was 90,000 Nos. of the store for which the unit price paid was Rs. 6.50. As the store was a developmental item required for Defence purposes, and as adequate sources of alternative supply had yet to be developed, the Committee appreciate the difficulties that Government faced in the case. The Committee would, however, like to point out that Government's position vis-a-vis this firm was rendered vulnerable due to the terms of the contract placed with them being at variance with the terms of the

firm's offer, in the matter of delivery of stores. This created a situation in which there was no concluded contract, with the result that Government could not pin the supplier to his original terms in the matter of price or other conditions of supply. The Committee have elsewhere in this report drawn attention to other instances of contracts not being placed with firms in terms of their offer as settled by tender or negotiation. The Committee hope that adequate precautions would be taken by Government to guard against recurrence of such cases.

Audit Paragraph

Payment of demurrage charges:—

1.131. Clearance of imported cargo is arranged by the Directorate of Shipping (on behalf of Government indentors|autonomous bodies etc.,) through clearing agents appointed for the purpose. It would be seen from the following that for failure to clear the imported consignments from the Calcutta port area within the free period prescribed by the port authorities large amounts were paid as demurrage during 1962—67:

Total demurrage paid (Rs. in lakhs)	Cases examined by the Directorate			Amount borne by Govern- ment (Rs. in lakhs)	Balance amount representing cases still (July 1968) awaiting examination (Rs. in lakhs)
	Rs. in lakhs	Amount for which responsibili- ty fixed on clearing agents (Rs. in lakhs)	Percent age		
139.40	106.70	9.34	9	97.36	32.70

1.132. It has been stated by Government (December 1968) that factors which contributed to incurrence of demurrage charges are:—

- (a) late receipt of shipping documents;
- (b) rigid attitude of, and delay by, the Customs authorities;

- (c) insistence by the Customs authorities in receiving all their dues before clearance of goods;
- (d) withdrawal of "note pass facilities" (under which government consignments are allowed to be cleared without prior payment and debits are raised subsequently by the Customs authorities;
- (e) after withdrawal of the 'note pass facilities', non-availability of sufficient funds in the deposit account of semi-Government parties with the Port authorities; and
- (f) delay in getting sanction of the Port Commissioners for transport of over-dimensioned packages by rail; etc.

1.133. They have further stated that remedial measures have since been taken to avoid heavy incidence of demurrage.

1.134. A few cases of inordinate delay noticed during test-check of the accounts of the Directorate are given below:—

Amount of demurrage	Period	Stores	Reason for delay
(1)	(2)	(3)	(4)
Rs. 80,055	Oct.—Dec., 1964	Cable drums and Coal Washery equipment.	The freight bill of the steamer agent received on 7th October, 1964 was paid on 4th November, 1964 and full clearance was effected on 3-12-1964.
20,417	March—April, 1964	Pumps Motors, etc.	Electric Rollers Bill of entry was released by the Customs authorities on 3-3-64 but landing charges were paid on 19-3-1964.

1	2	3	4
68,279	Feb.—April, 1967	Tractors	Discrepancies between the delivery order and the bill of entry, delay in inspection owing to congestion in the shed etc. Rs. 4,328 were recovered from the clearing agents for delay by them in payment of landing charges.
61,305	March—April, 1967.	Cranes	For want of catalogue.

(Paragraph 103, Audit Report (Civil), 1969)

1.135. The Committee asked for particulars of demurrage paid at Calcutta Port since 1966-67. In a note the Department of Supply have furnished the following information:

"In the Directorate of Supplies and Disposals, Calcutta, records showing demurrage paid are kept calendar year-wise. The demurrage paid for the years 1966 onwards is as follows:—

	Rs.
1966	31,24,600
1967	23,12,200
1968	23,44,200
1969	16,75,900"
(Upto 31-8-1969)	

1.136. The Committee enquired what percentage the consignment at Calcutta Port on which demurrage was paid bore to the total consignments cleared. The Department have stated: "Between years 1962 to 1965 approximately 40^a per cent. of consignments incurred demurrage. In 1966 approximately 30^b per cent and in 1967 approximately 22^c per cent of consignments incurred demurrage."

1.137. The Committee enquired why in respect of demurrage cases between 1962 and 1967 accounting for Rs. 106.70 lakhs Government had to bear liability for demurrage charges amounting to

(a) 29.4 per cent	} According to Audit
(b) 34.1 per cent	
(c) 43.1 per cent	

as much as Rs. 97.36 lakhs, while clearing agents were held responsible for demurrage amounting to only Rs. 9.34 lakhs. The Department have stated that "before finalising a demurrage case, explanation of the concerned clearing agents for incurring the demurrage was invariably called for. The explanation is then scrutinised in detail and recovery is effected from the clearing agents to the extent they are not able to establish that they were not at fault for the delay in clearance and consequential incurring of the demurrage. Merely because there has been delay in clearance with the resultant accrual of substantial demurrage, liability for the entire amount of demurrage or even the bulk thereof cannot *ipso facto* be put on the clearing agents. Nearly 50 per cent of 1962—67 demurrage cases have been settled after thorough scrutiny by a special Shipping Committee consisting of Director, Supplies and Disposals, Calcutta, Pay and Accounts Officer, Calcutta and an officer of associate finance. The responsibility of the clearing agents for delay in clearance and demurrage has been thoroughly examined and recoveries to the extent of their responsibility have been claimed. All demurrage cases above Rs. 5,000 which accrued "during 1962—67 have been approved at the Director General's level."

1.138. Taking note of the fact that cases accounting for Rs. 32.70 lakhs were still awaiting examination (July, 1968), the Committee desired to know the progress made. The Department have replied that from 1st July 1968 to 30th June, 1969 demurrage cases worth Rs. 12.3 lakhs have been finalised, out of which clearing agents have been held responsible for Rs. 1.61 lakhs. Cases of demurrage totalling Rs. 5.61 lakhs pertaining to one firm of clearing agents have been referred for arbitration as Government claim, since the firm could not furnish any explanation for the demurrage. Balance of Rs. 5.08 lakhs has been accepted to Government account.

1.139. The Committee desired to know the position of recovery of the sum of Rs. 9.34 lakhs stated in the Audit paragraph to be due from clearing agents. The following position has been explained in a note:

"Out of Rs. 9.34 lakhs, Rs. 3,43,106 relate to clearance without Government fund and this amount was deducted before admitting payments to clearing agents and hence treated as recovered. For the balance of Rs. 5.91 lakhs, recovery statements have been furnished to the Pay and Accounts Officer, Calcutta for appropriation from pending bills. The record in the Office of the Director, Supplies and Disposals, Calcutta shows that recovery to the extent of

Rs. 2,61,349 has been effected. The Pay and Accounts Officer could not furnish consolidated figures of recovery. However, statement of recovery letters have been forwarded to the Pay and Accounts Officer, Calcutta indicating recovery position therein. Confirmation from the Pay and Accounts Officer is awaited."

1.140. The Committee pointed out that one of the factors leading to demurrage was late receipt of shipping documents. The Committee desired to know the demurrage paid on this account and enquired why clearance of goods could not be made by executing indemnity bonds. The Department have stated: "No separate statistics have been maintained about the number of cases which incurred demurrage due to late receipt of shipping documents and the number of cases in which goods were removed by executing indemnity bonds. Instructions have since been issued to keep such statistics henceforth."

"From Government's experience with Customs|Steamer Agents, indemnity bonds are accepted only in the following cases:—

1. Guarantee by Steamer Agents is accepted where original bill of lading is not available, provided Steamer Agents' copy of the bill of lading is negotiable.
2. Customs will accept licence bonds from the Director, Supplies and Disposals, Calcutta only in respect of D.G.S. & D. consignments. For consignments of other Government Departments which are under clearance by the Director General, Supplies and Disposals, Customs will accept licence bonds from those Government Departments.
3. Customs also at times accept provisional duty assessment bonds where no individual item-wise priced invoice is available but only if the invoice shows at least the total value and the broad descriptions of the items ordered. In the above mentioned cases Government does furnish guarantee|indemnity bond."

1.141. The Committee enquired whether in any case involving payment of demurrage, responsibility could not be fixed on the clearing agents due to delay on the part of the Department in investigating these cases. They were informed: "No case has come to light where responsibility could not be fixed on the clearing agents due to delay in taking up these cases. Office records were available

and wherever it was necessary to call for explanations from the clearing agents, it was possible to do so on the basis of these records."

1.142. The Committee referred to the last sub-para of the Audit paragraph giving instances of delay in clearing cargo and enquired whether these 4 cases have since been examined to fix responsibility. The Department have furnished a note describing the history of each case which is briefly summarised below:

Case No. (i): Demurrage involved Rs. 80,055.

This comprised two cases. In the first case (demurrage Rs. 59,808), where the steamer arrived on 28th September, 1964, the freight bill from steamer agents dated 24th September, 1964 sent under cover of letter dated 26th September, 1964 was received by Assistant Director (Shipping), DGS&D on 28th September, 1964 and in the Shipping Section on 7th October, 1964, i.e., after 11 days. It was passed on to the Pay and Accounts Officer, Calcutta for payment on 9th October, 1964|12th October, 1964 (intervening holidays on 10th October, 1964 and 11th October, 1964) and cheque was issued by the latter on 4th November, 1964. The steamer agents released the delivery order on 9th November, 1964 and the bill of entry was submitted to the Port authorities on 10th November, 1964 but clearance could not be obtained till 27th November, 1964|5th December, 1964, as landing charges etc. to be paid to the Port Trust could not be debited to the running deposit account maintained by consignee with the Port Trust having been overdrawn.

In the second case (demurrage Rs. 20,247), where the steamer arrived on 28th September, 1964, the delivery order could not be obtained from the steamer agents till 28th October, 1964, due to delay on the part of the consignee in paying the steamer agents bill. The bill dated 9th September, 1964 and forwarded under cover of letter dated 11th September, 1964 was received by the Director of Supplies, Calcutta on 14th September, 1964 and passed on by him to the consignee the next day. The consignee (located at Ranchi) paid the bill only on 28th October, 1964. There was a further delay after receipt of delivery order in clearing the consignments, due *inter-alia* to deposit account of consignee with the Port having been overdrawn and some of the consignments having to be traced. The date of clearance was 16th December, 1964.

Case No. (ii): Demurrage involved Rs. 20,417.

In this case the ship arrived on 29th February, 1964. The demurrage paid upto April, 1964 was mainly due to late receipt of deli-

very order from shipping agents, and in respect of part of consignment, due to the permission for rail movement having to be obtained from Port Trust authorities.

Case No. (iii): Demurrage involved Rs. 68,279.

In this case the delay in clearance was due to formalities connected with customs inspection of packages. Delivery order was received on 4th February, 1967 but the packages could not be cleared except by stages, after inspection between 6th March, 1967 and 12th April, 1967. Some time was also spent on obtaining sanction of Port authorities for rail movement of packages.

Case No. (iv): Demurrage involved Rs. 61,305.

The ship arrived in this case on 13th March, 1967, while the packages were cleared by stages on 7th April, 1967, 28th April, 1967 and 3rd June, 1967. In this case the bill of entry could not be released till 21-3-67 for want of catalogue of the consignment which had to be obtained from the firm. The bill of entry after submission was returned by Customs due to discrepancy in the head of account. The matter was finally settled when the bill of entry was released on 31st March, 1967. The further delay that occurred was mainly due to the time spent in getting the requisite sanction of the Port Trust authorities for movement of certain heavy and over-dimensioned packages.

The Department of Supply have stated: "All the four cases were examined by the Director, Supplies and Disposals, Calcutta and sanction was also accorded by the Director General, Supplies and Disposals for payment of the demurrage charges. In this connection attention is invited to Annexures 'A' to 'D' from which it will be seen that in all the cases, demurrage was incurred due to circumstances beyond the control of the clearing agents or any one in the office of the Director, Supplies and Disposals, Calcutta.

1.143. With a view to avoid any delay in the clearance of stores and consequent incurrence of demurrage charges where clearance at the port of discharge is entrusted to the Director, Supplies and Disposals, Bombay|Calcutta|Madras, instructions have been issued from time to time. Copies of these instructions are contained in Office Orders Nos. 50 of 1967, 123 of 1967 and 23 of 1968."

1.144. From the information furnished by Government, the Committee observe that huge amounts are being paid every year as demurrage at Calcutta Port due to delay in clearing consignments received at the Port which are being cleared by the Department of Supply. The total amount paid as demurrage between 1962 and 1967

was Rs. 139.40 lakhs. Since 1967, the demurrage paid has amounted to Rs. 23 lakhs annually. To what extent the clearance of consignments was delayed would be evident from the fact that between 1962 and 1965 40^a per cent of the consignments cleared at the Port incurred demurrage. In 1966, demurrage was paid approximately on 30^b per cent of the consignments and in 1967, on 22^c per cent.

1.145. An examination of the four sample cases mentioned in the Audit paragraph suggests that the following factors have generally been contributing to delay in clearance of consignments:

- (i) Delay in obtaining delivery orders from steamer agents on account of delay in settlement of their bills.
- (ii) Delay in payment of port charges by consignees particularly semi-Government parties who do not maintain sufficient balances in their deposit account with the Port.
- (iii) Time taken by Port Trust authorities in giving permission for movement of packages.
- (iv) Time taken by Customs for examination of packages.

1.146. The Committee note that instructions have been issued by Government from time to time with a view to avoiding delay in clearance of consignments. The Committee trust that, through better coordination with the steamer agents, Port and Customs authorities and consignees, Government will be able to minimise such delay in clearances, if not avoid them altogether.

Audit Paragraph:

Purchase of "equipment camouflage nets".

1.147. On the basis of an advertised tender enquiry issued on 4th February 1963, the Director, Supplies and Disposals, Bombay, placed a contract on firm 'A' (of Meerut) (a small scale unit) on 19th April, 1963 for purchase of 6,960 equipment camouflage nets to be delivered by 31st August 1963. The contract provided for free delivery at the premises of the Inspectorate General of Stores, Anand Parbat, New Delhi, as against F.O.R. free local delivery at Meerut offered by the firm in its tender. Also, while the firm was required to supply the stores in packed condition for which it had quoted a rate of Rs. 80.84 each, the contract provided the rate of Rs. 79.84 each which was the rate quoted by the firm for stores in loose condition. These errors were rectified by the Directorate by issuing a letter of amendment on 10th June 1963 on receipt of the firm's representation dated

(a) 29.4 per cent	} According to Audit
(b) 34.8 per cent	
(c) 43.1 per cent	

13th May, 1963.

1.148. However, the firm did not make any supplies for one reason or another, and finally on 27th July, 1963 regretted its inability to execute the contract except with (a) an increase in the contract price (which, it said, it had quoted due to a misunderstanding), and (b) Government assistance in procurement of yarn. The contract was consequently cancelled in January, 1964 at the firm's risk and expense and in the same month repurchase was made at higher rate (Rs. 137 each) from two other firms 'B' and 'C' resulting in extra expenditure of Rs. 4.10 lakhs.

1.149. The extra expenditure in the repurchase could not be recovered from firm 'A' as, according to a legal opinion, there was no concluded contract with the firm owing to:—

- (a) the variation in the place of inspection and the terms of delivery offered by the firm from those incorporated in the contract; and
- (b) non-acceptance by the firm of the subsequent amendment issued on 10th June, 1963 seeking to accept the alternative offer of the firm, for F.O.R. delivery at Rs. 80.84 each, when the time for acceptance of tender had expired.

1.150. A penalty of censure was imposed on officers concerned for the lapses in the matter.

[Paragraph 90, Audit Report (Civil), 1969.]

1.151. The Committee enquired whether the Director General, Supplies and Disposals had any previous experience of the performance of the firm. In a note, the Department of Supply have stated:

“Director General, Supplies and Disposals had no previous experience of this firm. They were also not registered with the Director General, Supplies and Disposals. Their offer was, however, most competitive. The Defence Inspectorate were, therefore, asked to inspect their premises and to verify their capacity. The capacity report received from the Defence Inspectorate was favourable; it indicated that they had a capacity of 800 to 1000 nets per month.

Even then the order was placed on them with 10 per cent security deposit and subject to advance sample clause which was as follows:—

‘Advance sample to be submitted to the Inspector by 10th May, 1963.’”

1.152. In reply to a further question whether any *mala fides* were suspected, the Department have stated that no *mala fides* were involved. As to the action taken against the firm, the Committee have been apprised of the following position:

“The firm stands de-registered as a small scale unit from the list of National Small Scale Industries Corporation.

The firm was never on the list of approved suppliers prepared by the Director General, Supplies and Disposals. Since the cancellation of the Acceptance of Tender placed on this firm, neither any orders have been placed with it, nor has any tender enquiry been issued to it.”

1.153. The Committee observe that due to a lapse, a contract was placed on a firm, some of the conditions of which were at variance with the tender on the basis of which the contract was placed. In the result, there was no validly concluded contract and when the firm defaulted, the Department could not take action for recovery of the extra cost of Rs. 4.10 lakhs incurred on purchase of the stores from alternative sources. As departmental action has been taken and the defaulting firm has also been de-registered, the Committee do not wish to pursue the case further. The Committee, however, trust that Government would, in the light of their experience in this and other cases, reinforce their purchase procedures to ensure that contracts are placed strictly in terms of offer of parties, as tendered or negotiated, so that Government’s rights are fully protected in any eventuality.

Audit Paragraph

Purchase of Winches

1.154. For extension of the lateral road project,* during July, 1965 and March, 1966 the Director General, Supplies and Disposals, placed

*of Paragraph 76 of the Central (civil) Audit Report, 1968.

on firm 'A' two acceptances of tender for supply of grabs and winches. The table below shows the supplies made by the firm against these contracts:—

Date of acceptance of tender	Number		Stipulated date of supply	Number supplied within the stipulated delivery period		Subsequently supplied (winches only)	Period of supply
	Grabs	Winches		Grabs	Winches		
20th July, 1965.	45	15 (increased to 25 in June, 1966)	31st August, 1965 re-fixed (on 21st March, 1966, (as 15th April, 1966 due to delay in approval of proto-type.	45	10	5	27th September to 3rd October, 1966 31st December, 1966 to 1st February 1967
15th March, 1966.	12	12	15th June, 1966.	12	Nil	Nil	.

1.155. According to information received (till June, 1968) from the State Governments executing the project, 21 grabs valued at Rs. 1.37 lakhs and 7 winches valued at Rs. 2.75 lakhs had, owing to reduction in the scope of work in August, 1966, as a measure of economy, been reported as surplus.

1.156. It would appear from the following that purchase of winches reported to be surplus was avoidable:—

- (i) On the failure of the firm to deliver the winches outstanding against the contract dated 20th July, 1965, the delivery period was extended (on 12th September, 1966) to 15th October, 1966 without consulting the indenter and (on 24th December, 1966) further upto 15th February, 1967 with the concurrence of the indenter. During these extended periods, the firm supplied 5 and 10 winches respectively.

- (ii) The firm failed to supply 12 winches due against their contract of 15th March, 1966. On 30th January, 1967 extension of the delivery period up to 15th March, 1967 was allowed to the firm. This extension was cancelled on 1st February, 1967 as in the meantime the indenter had advised the Director General, Supplies and Disposals, not to extend the delivery period under any circumstances without his prior approval. The firm did not agree to this cancellation. Negotiations were later conducted with the firm, pursuant to which 5 per cent discount, which the firm had agreed to allow in consideration of the total number of winches ordered being 39* was withdrawn by the firm and the outstanding number of 12 winches was cancelled from the contract in question and brought over to a fresh rate contract entered into for one year from November, 1967 (to cater to the requirements of various direct demanding officers) at the same rate but without the 5 per cent discount. Against this rate contract, six winches are reported to have so far (October, 1968) been purchased.

[Paragraph 97, Audit Report (Civil), 1969.]

1.157. The Committee were informed that out of the two contracts mentioned in the Audit paragraph, only one contract (dated 20th July, 1965) related to the requirements of the Lateral Road Project. The second contract (dated 15th March, 1966) was not placed to meet the requirements of the Lateral Road Project: it was meant to provide machinery required for the Strategic Road Works Programme in Gujarat State.

1.158. During evidence the representatives of the Department of Supply and Ministry of Transport informed the Committee that in respect of the first contract (relating to the requirements of the Lateral Road Project) the indent, so far as winches were concerned, was for 45 Nos.. At the time the contract was placed, the firm had only 15 Nos. So, the contract was placed for 15 Nos. with the provision for supply of 30 Nos. subsequently. In February, 1966, the Ministry of Transport made a review of their requirements of winches for the project as a result of which it was decided to cut the requirement from 45 Nos. to 25 Nos. This was communicated to the Director General, Supplies and Disposals in March, 1966. The Director General, thereafter amended the contract, providing for the sub-

*This includes 2 winches against an order placed on 5 July, 1966 for another indenter.

sequent lot of supply to be reduced from 30 to 10. In effect, therefore, the total number of winches ordered amounted to 15 plus 10, i.e., 25 Nos.

1.159. In reply to a question from the Committee, it was stated that the delivery period for winches was extended due to time taken in the approval of a prototype produced by the firm. The winches previously purchased were imported ones. The contract, therefore, provided for a prototype being prepared by the firm. This prototype was got approved by the Inspection Wing of the Director General, Supplies and Disposals and a representative of the Ministry of Transport. "For getting this prototype, it took considerable time. In February, 1966, the prototype could be approved."

1.160. The Committee enquired why the Department of Supply extended the delivery period on two subsequent occasions (i.e., on 12th September, 1966 and 24th December, 1966), on the first occasion without consulting the indenter. It was stated that, according to the provisions of the rules, the Director General, Supplies and Disposals was authorised "to grant extension upto a period of 3/4 months without consulting the indenter, against ordinary and programme indents." Moreover, in this case the indenter concurred with the extension which was given. Subsequently, the Secretary, Department of Supply stated: "There was really nothing wrong... The indenter was very keen that these winches should be supplied... There was overwhelming evidence that the winches were required by the indenter."

1.161. The Committee pointed out to the representative of the Ministry of Transport that the issues arising out of the procurement of machinery had been comprehensively examined by the Public Accounts Committee in their Forty-Second Report (Fourth Lok Sabha). The project, taken up on a high-priority basis, was downgraded in August, 1966 and execution slowed down. Machinery worth Rs. 2.82 crores became surplus as a result. The Committee enquired why in this case the orders could not be cancelled. The witness stated: "We have reduced our requirements. Actual requirement was for 45. From 45 we have brought down (to 25)." He added: "We have reviewed our requirements and brought them down. These were the barest minimum required to carry on the works." The Committee enquired how many winches were rendered surplus. The witness replied: "Seven only (value—Rs. 2.75 lakhs). We have used them at other places."

1.162. Taking up the second contract, the Committee wanted to know why, after the firm failed to supply the 12 winches on the 3736 Ls—6.

stipulated dates, the order was brought on to a rate contract. The Committee drew attention in this connection to the fact that in this process Government lost the benefit of discount which the firm had offered. The Secretary, Department of Supply replied: "We tried our level best to cancel. As per contract, it was not possible to cancel the contract without our becoming liable for damages. The firm had told us that they had got these diesel engines for which we issued priority release order; the winches were ready; they had suffered heavy loss. They had taken advance from the State Bank and they had spent Rs. 6 lakhs. Their capital was completely blocked. We informed the firm that we did not want the 12 winches. They did not agree. We had written to them with the agreement of the indenter. There was nothing else that could be done. The firm said, "all right, we will agree, provided we are put on the rate contract". They said, 'discount of 5 per cent was for a number of 45; subsequently reduced to 39. Since you had reduced your requirement the discount was not admissible'. We had no option but to agree to the firm's request—2 lakhs of rupees loss was there. Only 5 winches were lifted. The order was placed by the Direct Demanding Officer only for 5 winches. To that extent there was a great saving. I think, on the whole, the Director General, Supplies and Disposals has done a very good job. Normally, we could not have refused to take 12 winches."

1.163. In regard to this contract, the Ministry of Transport have in a note, apprised the Committee of the following position:

"Our requirements for these machines were communicated to the Director General, Supplies and Disposals under this Ministry's indent No. WV-20(2)165, dated 4th October, 1965. The requirements of machinery for the Strategic Road Works in the Gujarat State, were first reviewed in August, 1966 and in October, 1966 it was decided to withhold further procurement action in respect of all those items of machinery for which the supply orders had not been placed by the Director General, Supplies and Disposals and also in respect of those items for which orders had been placed but whose supply was not likely to materialise by the delivery dates intimated by this Ministry. The above decision was communicated to the Director General, Supplies and Disposals *vide* our D.O. letter No. SRII-22(15)166, dated 11th October, 1966. According to our indent No. WV-20(2)165, dated 4th October, 1965, mentioned above, the Director General, Supplies and Disposals were required to arrange the procure-

ment and supply of these winches by 30th June, 1966. The supplying firm concerned could not supply the stores by that date."

"As stated above, in view of the economy drive launched by the Government of India in August, 1966, it was decided in October, 1966 to withhold further procurement action in respect of those items of machinery for which orders had been placed by the Director General, Supplies and Disposals but whose supply was not likely to materialise by the delivery date intimated by this Ministry in our indent No. WV-20(2)|65, dated 4th October, 1965. The above decision was communicated to the Director General, Supplies and Disposals under our D.O. letter dated 11th October, 1966 mentioned above. Even by 11th October, 1966 the firm could not supply even a single machine.

The Government of Gujarat who were the consignees for these 12 Nos. winches had intimated under their letter No. MCN-1666|Kutch|1284-H, dated the 6th December, 1966 that those machines might not be procured as they would carry on the work without the same.

1.164. In a copy of the minutes of a meeting held in DGS&D on 7th January, 1967 for reviewing the progress of cancellation of certain supply orders, received from the Director General, Supplies and Disposals alongwith their D.O. letter No. MEIP|SVI|220|71|440-449|III, dated 9th|10th January, 1967, it was stated that it had been decided in the meeting that the firm might be asked to expedite the supply of winches and necessary extension for the same might be authorised. As soon as we received these minutes, we informed the Director General, Supplies and Disposals in our letter of the 31st January 1967 reiterating our stand for not extending the delivery date without prior approval."

1.165. The Department of Supply have, however, informed the Committee that "in the case of contract dated 15th March 1966 for 12 winches, the delivery period was extended on 30th January, 1967 upto 15th March, 1967 as agreed to by the indenter during the discussion held on 7th January, 1967."

1.166. The Committee feel that, with a little care, Government could have avoided procurement of 7 of the 25 winches costing Rs. 2.75 lakhs, procured against the contract placed in July, 1965, which subsequently became surplus. The contract for the winches

which were required for the Lateral Road Project between Amin-gaon and Bareilly* stipulated delivery by 31st August, 1965. Due to delay in approval of the prototype, the delivery period was later refixed as 15th April, 1966. In August, 1966, Government had decided to slow down the tempo and execution of the project, as a result of which a substantial part of the machinery originally indented for became surplus. It is not, therefore, clear why, in September, 1966 and December, 1966, further extensions of delivery dates were agreed upon. The Ministry of Transport which was the indenter, could well have reduced their requirements at this stage, even if they had to agree to the extension. The Committee would like to be informed as to why this was not done.

1.167. In regard to the second contract placed in March, 1966 for 12 winches, the Committee find that, though the supply against the contract was cancelled, the firm had to be accommodated through a rate contract which was concluded with it in November, 1967. As a result of the cancellation of the supply against the contract dated March, 1966, Government had lost a discount of Rs. 0.77 lakh, which had been originally agreed to by the firm. The delivery date stipulated in the contract was 15th June, 1966, but, in January, 1967, it was extended to 15th March, 1967. It would appear, however, that, in the meanwhile, the indenter had, in October, 1966 intimated that supplies would not be required. The Committee would like Government to find out why, after this communication had been received, the period of supply was extended. Since the supply had not been made at that stage, it is possible that Government could have cancelled the contract, without forfeiting the rebate, for failure on the part of the supplier to effect supplies.

Audit Paragraph

Purchase of ground sheets

1.168. In November, 1964 the Director General, Supplies and Disposals, placed a contract on firm 'A' for purchase of 44,000 ground sheets at Rs. 13.03 each to be delivered by 31st August, 1966 or earlier in equal monthly instalments. On a request made by the firm in June, 1965, the delivery period was amended to provide for supplies to commence from August, 1965 and to be completed by 30th September, 1966 in monthly instalments.

* The issues arising out of the procurement of machinery for this project along with other matters have been dealt with in the Forty Second Report (Fourth Lok Sabha) and Eighty-Sixth Report (Fourth Lok Sabha).

1.169. The firm failed to complete the supply and between September 1965 and June 1966 the outstanding quantity was cancelled and repurchased (at the firm's risk and cost) at an extra cost of Rs. 1.31 lakhs. The demand notices for recovery were issued between 13th December, 1965 and 5th August, 1967 but the firm has not paid the dues so far (September, 1968). It has been stated by the Ministry (December, 1968) that the matter is being referred to arbitration.

[Paragraph 93, Audit Report (Civil), 1969]

1.170. The Committee enquired when the case was referred for arbitration and whether there was delay in this regard. The Committee also wanted to know the prospects of the recovery being made. The Department, in a note stated:

"Approval of competent authority for initiating arbitration proceedings was obtained on 27-2-69 and further action taken thereafter. The reasons for delay in referring the dispute to arbitration are as under:

- (i) The firm disputed the claim made by Government on 7-10-1966 for Rs. 1,08,927. This protest was made on 20-10-1966. The file got displaced thereafter and was traced on 1-7-1967.
- (ii) The case was referred to the Ministry of Law on 9-8-67 for their advice whether Government's claim was in order.....It was, therefore, necessary to send all these risk purchase cases to the Ministry of Law for their legal opinion.
- (iii) The relevant files were under action and the details could not, therefore, be collected immediately.....
- (iv) Ministry of Law advised that the Government was entitled to recover the amount from the defaulting firm along with freight on 26-11-68.
- (v) A supplementary demand notice for Rs. 794.82 being the difference in freight was sent to the firm on 17-2-1969 after obtaining the relevant rates from the Railways."

"Shri who was appointed Sole Arbitrator on 3rd June, 1969, having resigned on 23rd June, 1969, was appointed as Sole Arbitrator on 24-7-1969. The Arbitrator gave time to the claimant to file their statement of claim and documents by 25-9-1969."

"There is reasonable hope of recovery as the premises No. 9, Barakhamba Road are in the name of the legal heirs of the (firm). Legal Counsel of the firm, *vide* letter

dated 3rd May, 1969 has also protested against the cancellation of the contract and has desired that the dispute may be referred to arbitration in terms of the contract."

1.171. The Committee regret that there was an inordinate delay of nearly three years in processing for arbitration Government's claim against the firm amounting to over Rs. 1 lakh. The claim was preferred in October, 1966, which the firm promptly disputed. Due to the file getting misplaced, about 10 months were lost before the case could be referred for legal opinion in August, 1967. The legal opinion could not be obtained till November, 1968, due to requisite details having to be collected. There was a further delay of 8 months before an arbitrator was appointed in June, 1969 and his award is still awaited.

1.172. The Committee trust that Government will issue suitable instructions impressing on all officials concerned with handling of contracts the need to be prompt and businesslike in dealing with cases. The Committee would also like to know the action taken against the person responsible for misplacement of the file for ten months.

1.173. The Committee would also like to be apprised of the outcome of the arbitration proceedings and the progress of recovery of the amount due.

Audit paragraph

Loss due to non-observance of prescribed purchase procedure.

1.174. On the basis of negotiations, the Directorate of Supplies and Disposals, Bombay, placed two acceptances of tender on firm 'A' for supply of 20.99 lakh metres of "drill cotton (olive green)" at Rs. 2.03 per metre of 28" | 29" width. The supplies against these contracts were as follows:

Date of A/T	Quantity (in lakh metres)	Delivery period	Quantity actually supplied (in lakh metres)	Extension of period granted up to	Delivery on	Quantity cancelled at firm's risk and expense (in lakh metres)	Date of cancellation of contract
10th February, 1964	14 00	31st March, 1964 to 30th June, 1964 in four equal monthly instalments of 3.50 lakh metre each.	6.57	30th June, 1965	2nd April 1965	7.43	6th May, 1965.
20th July, 1964	3.49 3.50	31st December, 1964. 31st January, 1965.	5.39	31st October, 1965	13th May, 1965	1.60	6th May, 1965.

1.175. The cancelled 9.03 lakh metres were repurchased from two other firms 'B' and 'C' with whom running contracts for 64.39 lakh metres had been entered into on 20th and 22nd April, 1965 at Rs. 2.20 per metre of 28" | 29" width and Rs. 2.71 per metre of 36" width respectively. The extra cost of Rs. 1.51 lakhs on repurchase was, however, not recovered from the defaulting firm 'A' as, according to a legal advice obtained in June, 1966, the defaulting firm could not be held liable for the extra cost because the contracts, in anticipation of their breach, had been cancelled on 6th May, 1965.

1.176. It has been stated by the Directorate (April, 1968) that it became necessary to off-load firm 'A' to cover the minimum 75 per cent quantity guaranteed under the running contracts entered into with firms 'B' and 'C'. It is, however, not clear why on 2nd April, 1965 and 13th May, 1965, the Directorate granted extensions of delivery periods to firm 'A' and why the quantity in default could not be cancelled straight-away. It is also noticed that the quantity eventually purchased from firms 'B' and 'C' (59.34 lakh metres) exceeded the minimum guaranteed quantity (48.30 lakhs) by 11.04 lakh metres.

[Paragraph No. 94, Audit Report (Civil), 1969].

1.177. The Committee desired to know whether the capacity of the firm 'A' was assessed before the order was placed. The Department of Supply have explained the position in this regard as follows:

"No separate assessment of the capacity of this firm was called for at the time of placement of this order on 10-2-64 for 14 lakh metres as they were holding a previous contract for the same item for 17.5 lakh metres against which, at the time of consideration of this proposal for placement of additional order, they had supplied nearly 10 lakh metres and the balance quantity was expected by the end of February, 1964. The intention of placing an additional order for 14 lakh metres was to keep the capacity going as there were only three units who were currently manufacturing this quality of material which was required for parade garments."

1.78. Taking note of the fact that the contract with firm 'A' was cancelled even before expiry of the time granted to the firm, the Committee enquired why this was done. The Department of Supply has stated: "In the present case, a peculiar situation arose. In spite of the grant of extension beyond the original stipulated

delivery period for nearly a period of one year, the firm were not able to produce satisfactory material due to the completed breakdown of their dyeing plant. and the production was not coming anywhere near the monthly schedule of delivery laid down. During this period, the contracts with the other two supplying firms were getting completed and those successful capacities had to be sustained. Although the Director General, Ordnance Factories, had given firm indication for a bulk demand, the formal indent was to follow. Anticipating this indent and also to ensure a regular supply of this critical material at least from the other two established sources, the conclusion of a running contract was decided upon and for entering into such contract, firm commitments upon 75 per cent of the requirements had to be indicated in the contract. Since the firm were not able to supply the requirements in spite of their sincere efforts due to technical reasons, it was decided to off-load them prior to the expiry of the extended delivery date, the unsupplied portion of about 9,02,720 metres was cancelled at their risk and cost. . . . The main consideration for off-loading. . . . was that it was clear in the minds of the purchase officers that this firm would not be able to meet their contractual obligations on account of continuing trouble in their dyeing plant."

1.179. The Committee enquired how, after having cancelled on 6th May, 1965, the contract with firm 'A' (second contract placed with them on 20th July, 1964), the delivery period was extended on 13th May, 1965. The Department of Supply have stated that the contract was for supply of 6.99 lakh metres. What was cancelled on 6th May, 1965 was only a quantity of 1.59 lakh metres. This left a quantity of 5.4 lakh metres, out of which supplies had been effected by the firm to the extent of 3.09 lakh metres. The extension granted on 13th May, 1965 was in respect of the residual quantity of 2.31 lakh metres still to be supplied.

1.180. The Committee pointed out that part of the supply from firm 'A' was off-loaded to the two firms with whom running contracts were executed so that minimum off-take necessary under the running contracts could be ensured. The Committee asked whether this off-take was not in any case ensured, as other indents for this material had been received from the Director General, the indenter. The Department of Supply have stated:

"As far as this critical material was concerned, proper liaison was maintained with the main indenting department, namely, the Directorate General, Ordnance Factories

which caters to the entire clothing requirements of the Defence Services. The Directorate General, Ordnance Factories raised material indents on the Director General, Supplies and Disposals for procurement. Keeping in view the increased production capacity established with (the first running contract firm) and the regular capacity available with (the second running contract firm) as also the poor quality of material that was being manufactured by firm 'A', a reference was made to the Directorate General, Ordnance Factories by DS (Textiles) on 20th April, 1965 asking the Directorate General, Ordnance Factories to review the overall requirements of this item and raise demands upto 20 to 30 lakh metres immediately, particularly keeping in view their monthly requirements of 1-1/2 lakh metres, as indicated by their representative in the Defence Planning Committee meeting periodically held in Delhi'.

1.181. In reply, the Directorate General, Ordnance Factories, stated as follows:

'As regards further indents for Drill O.G. as already indicated in my D.O. of even number dated 13-2-65, all indents received from D.O.S. have already been covered by our material indents. We have requested D.O.S. to review their requirements of clothing items and to let us have their demands for the additional requirements as quickly as possible to enable us to raise necessary indents for the deficient quantity of material on you. It is noted from your D.O. quoted above that besides a heavy backlog against the contracts placed on firm 'A' the material supplied by them are not upto the specification requirements. Under the circumstances, you may consider diversion of some of the load to (second running contract firm) in order to utilise the capacity of this mill to the minimum'.

This reply indicated that the whole matter was under review by the D.O.S. and the prospects of getting any further bulk indents within the validity date of the running contract, i.e., September|October, 1965, were remote. The Department's misgivings were confirmed

by the actual indents received subsequently, which were as follows:

S. No.	Indent No.	Date of receipt	Quantity covered
1	48970/IB	6-5-65	15,850 metres
2	48971/IB	6-5-65	15,850 metres
3	49481/IB	29-8-65	9,236 metres
4	49611	22-9-65	7,02,225 metres
			7,43,161 metres

It will be evident that a bulk indent for over 7 lakh metres was received only in September, 1965 and this was probably raised in the wake of the Pakistani aggression.

The placement of the supply orders in sufficient quantities against the running contract concluded in April, 1965 was necessary in order to maintain continuity of supplies so that the suppliers could plan their production accordingly, instead of diverting their capacity for production of drill to trade any other indentor. The actual cancellation of the orders on firm 'A' was carried out only after the receipt of intimation from the Directorate General, Ordnance Factories that the prospect of any immediate indents was not there. This communication dated 28-4-65 reached DS (Textiles) on 1-5-65. Had he given an assurance that the indents in bulk quantities were forthcoming, the Department might have delayed cancellation of the orders on firm 'A'. In fact, the indentor had suggested off-loading of firm 'A's orders and diverting them to other units."

1.182. The Committee pointed out that the cancelled quantity was repurchased from the other firms 'B' and 'C', incurring an extra expenditure of Rs. 1.51 lakhs. The Committee further pointed out that the amount could not be recovered from the defaulting firm 'A' due to the contract having been cancelled before its expiry date. The Committee enquired if any responsibility has been fixed and action taken. The Department have stated that "this matter was examined in detail at the highest level in the Department of Supply

and in consultation with Ministry of Finance, it was decided to close the case after availing of certain discounts in prices offered by the firm which gave a benefit of Rs. 45,240/- to Government."

1.183. The Committee are unable to understand how, after having extended the periods of delivery stipulated in the contracts, Government could cancel the contracts before expiry of the extended delivery periods. This action resulted in Government forfeiting their claim against the firm for extra cost of Rs. 1.51 lakhs which they incurred on purchases of the unsupplied materials from alternative sources, as according to legal opinion, the contracts had been cancelled in anticipation of their breach. It has been stated that the contracts had to be cancelled and the unsupplied quantity off-loaded to other firms, as "the firm were not able to produce satisfactory material due to complete breakdown of their dyeing plant." Besides, "it was clear in the minds of the purchase officers that the firm would not be able to meet their contractual obligations and other established sources of production had to be kept going." If this was so, a proper assessment of the position should have been made before the extension of the delivery dates was agreed to by Government. The Committee note that the case after investigation at "the highest level" has been closed after accepting discounts amounting to Rs. 45,240 offered by the firm. The Committee hope that Government would ensure, in the light of their experience in this case, that contracts are cancelled and risk purchase orders placed only after fully complying with the due legal requirements.

Audit Paragraph

Non-recovery of extra cost in repurchase.

1.184. In the cases mentioned below recovery of extra cost of Rs. 0.84 lakh in repurchase of stores could not be made from the firms

which failed to supply the stores as repurchase was made after the prescribed period of six months from the date of default:—

Name of stores	Date of contract	Date of repurchase	Remarks
Extra expenditure	Original date of delivery/ extended date of delivery as mutually agreed upon		
(1)	(2)	(3)	(4)
(i) Kartai (Young Buffalo) (Rs. 23,336)	10th February, 1965 31st, March, 1966/15th July, 1966	17th March, 1967	Out of 1.59 lakh Kgs. contracted for, the firm could supply only 1.15 lakh Kgs. A <i>Suo moto</i> extension of delivery period up to 5th September, 1966 was granted to the firm on 5th August, 1966 followed by cancellation of the contract at its risk and expense on 2nd November 1966 and repurchase of stores at higher rates. No claim for recovery of general damages has been made so far.
(ii) Cone rock roller bits (Rs. 23,233)	18th February 1965 10th March, 1965.	7th January, 1967	On 4th May, 1965, the acceptance of tender was amended to provide for inspection at the consignee's premises. The stores despatched by the firm on 3rd June, 1965 were rejected by the consignee and this was followed by prolonged correspondence

(1)

(2)

(3)

(4)

between the Director General, Supplies and Disposals and the consignee, on the one hand, and the firm, on the other, about replacement of rejected stores. Finally a notice was served on the firm on 2nd January, 1966 calling upon it to deliver the stores by 28th February, 1966, followed by cancellation of the contract at the firm's risk and expense on 3rd March, 1966. The cancelled stores were repurchased at higher rates.

A claim for recovery of Rs. 11,265 as general damages was made on the firm on 20th January, 1968, but the firm refused to pay the damages.

(iii) Bins Galvanised

(Rs. 37,451)

14th May, 1964

31st July, 1964/30th September, 1966.

21st February, 1968.

Order was placed on the firm on 14th May, 1964 without waiting for a report on the capacity of the firm called for from the Director of Inspection on 15th April, 1964. According to the Inspectorate's Report which was received on 3rd June, 1964, the firm had neither the necessary equipment nor technical personnel or

(1)

(2)

(3)

(4)

experience for manufacturing the stores in question.

The security deposit required to be tendered by the firm was also subsequently reduced from 10 to 5 per cent of the value of the contract. On the failure of the firm to supply the stores delivery dates were extended up to 15th November, 1964 (on 28th October, 1964) and upto 30th September, 1966 (on 15th July, 1966). and finally a notice to complete the supplies by 21st November, 1967 was issued on 30th October, 1967 followed by cancellation of the contract on 21st February, 1968 and repurchase of stores at higher rates.

[Paragraph 92, Audit Report (Civil), 1969.]

1.185. The Committee desired to know whether a review of the contract mentioned against (i) of the Audit paragraph was made before expiry of the extended date, viz., 15th July, 1966. The Department of Supply have stated that the case was reviewed on 21st June, 1966 and the consignee, i.e., General Manager, Hides and Skins Factory, Kanpur, was requested on 1st July, 1966 to intimate supply position of stores as on 15th July, 1966 and to state whether delivery period could be extended further.

1.186. The Committee pointed out that the extended date of delivery expired on 15th July, 1966. The risk purchase order was placed on another firm only on 17th March, 1967. This was after the

prescribed period of six months from the date of default within which a risk purchase had to be made to have a sustainable case against the defaulting firm. The Committee wanted to know the reasons for the delay that occurred. The Department of Supply have explained the position in this regard as follows:

“The General Manager, Hides and Skins Factory, Kanpur was requested on 1st July, 1966 to intimate the position of supply of stores and also whether delivery period was to be extended if a request to that effect was received from the firm. The indenter in his letter dated 14th July, 1966 did not agree to extension in the delivery period. Extension-cum-notice was given to the firm on 5th August, 1966 to supply the outstanding quantity of 3,467 Nos. by 5th September, 1966. The firm asked for more time to supply the balance quantity *vide* their letter dated 12th September, 1966.

The indenter was requested on 23rd September, 1966 to confirm whether the balance quantity was still required and whether delivery period could be extended further. The indenter in his letter dated 1st October, 1966 confirmed that the outstanding quantity was still required and that it was upto the D.G.S. & D. to consider whether any further extension should be granted. It was decided on 13th October, 1966 to cancel the balance quantity at the risk and cost of the firm.

D.G.S.&D. had been taking the date of breach as 5th September, 1966, i.e., the date allowed *vide* extension-cum-notice issued on 5th August, 1966 and taking 6 months from this date, risk purchase was to be completed by 4th March, 1967. The case was referred to Ministry of Law who opined that the date of breach was 15th July, 1966 and that only general damages could be claimed from the defaulting firm.

Subsequently, the purchase proposals were formulated and the order was placed on 17th March, 1967.”

1.187. The Department of Supply have furnished copies of legal opinion taken in this case an extract from which is given below:

“It cannot be said on the facts stated that 5th September, 1966 was a mutually extended delivery period for the A/L dated 5th August, 1966 was neither affirmed nor acted upon by the firm during the whole period the said letter of extension purported to be in operation. Consequently, the date of breach would be 15th July, 1966 and not 5th September, 1966.”

1.188. The Department have further stated that an amount of Rs. 9,687 as general damages has been recovered from the firm by the Pay and Accounts Officer, New Delhi *vide* his letter dated 4th July, 1969.

1.189. The Committee find that, in this case, the "risk purchase" rights of Government were prejudiced, due to a failure to comply with the legal requirements in this regard. The date of delivery mutually agreed upon between the supplier and Government was 15th July, 1966, but a *suo moto* extension was granted by Government till 5th September, 1966, for which concurrence was not obtained. In the result, when the firm failed to effect supply, Government could not make "risk purchase" at the expense of the firm, as by that time six months from 15th July, 1966, *i.e.*, the mutually agreed date had elapsed.

1.190. The Committee have dealt with similar cases of this type elsewhere in this report. The Committee trust that steps would be taken to instruct purchase officers adequately about the legal requirements to be complied with in the matter of risk purchases.

1.191. In regard to case No. (ii) mentioned in the Audit paragraph, the following position emerges from information supplied to the Committee by the Department of Supply:

"A limited tender enquiry for the stores was issued to four firms, out of which three quoted. All the three offers were subject to foreign exchange provision which the indenter did not make. The firm with whom the order was placed made an offer after opening of tenders, offering the stores *ex-stock*. The firm was not one of the four covered by the tender.

The delivery period given in the acceptance of tender was 10th March, 1965. The firm informed the Director General, Supplies and Disposals on 6th April, 1965 that the Director of Inspection had refused to inspect the goods as they could not show him the purchase invoice for the stores. With the concurrence of the indenter it was decided that the firm may be allowed to despatch the goods direct to the consignee, who would carry out the inspection. The contract was also accordingly amended and the firm despatched the goods on 26th May, 1965. The stores were, however, rejected by the consignee. A notice was issued on 22nd January, 1966 to supply the stores by 28th February, 1966 and as the firm failed to make the

supply, the contract was cancelled at their risk and expense on 3rd March, 1966. The subsequent chronology of events was as follows:

- "3rd March, 1966—Risk purchase Tender Enquiry issued.
- 5th April, 1966—Tenders opened.
- 7th April, 1966—Tenders referred to Indenting Officer for providing foreign exchange and also requested for DGTD Clearance.
- 14th April, 1966—Firm asked for clarifications.
- 19th April, 1966—DGTD Clearance received.
- 22nd April, 1966 to 2nd June, 1966—Indentor stated that Government approached for foreign exchange.
- 6th June, 1966—Meanwhile devaluation took place. Firms increased the prices.
- 1st July, 1966—Indenting Officer given notice to provide foreign exchange by 16th July, 1966.
- 9th August, 1966—Indenting Officer was advised that since Tenders were opened on 5th April, 1966 and foreign exchange allocation not received despite repeated letters and telephonic reminders the case was closed at our end. In case stores still required, fresh Indent to be placed with foreign exchange.
- 18th August, 1966—Indentor stated that foreign exchange not available and to examine the possibility of asking tenderers to obtain licence on Actual User's Basis according to revised liberalised Import Policy of the Government.
- 7th September, 1966—Firm asked for about confirmation.
- 14th September, 1966—M/s. (the new firm) advised that they applied for licence under liberalised import policy.
- 18th October, 1966—The new firm asked to accept pre-devaluation prices with adjustment for increase due to devaluation and Customs Duty only without affecting mark up.
- 3rd December, 1966—Firm agreed as a special case but wants Actual User's Licence as their import licence issued under liberalised policy fully utilised against Government orders.
- 21st December, 1966—Firm asked to import against their own licence as a special case.

30th December, 1966—Firm agreed to import under their own licence as a special case.

7th January, 1967—Order placed.

16th February, 1968—Supplies completed.”

1.192. To a question from the Committee why risk purchase was not finalised within the prescribed period of six months, it has been stated by the Department of Supply: “The reasons for delay in repurchase arise from the fact that this item being of imported origin is not available in the country ex-stock, and no foreign exchange is available with the indentor. Further efforts were made to get the stores for the indentor from the firm’s own licence without any special foreign exchange commitment for the Government.” It has also been indicated in the note submitted by the Department of Supply that the legal opinion given at one stage (on 4th February, 1966) was that the date of default for the risk purchase could be taken as 28th February, 1966, i.e., the date by which in terms of the notice dated 22nd January, 1966 served by the D.G.S.&D. to the defaulting firm, the firm was to complete supplies. However, at a subsequent stage, the legal opinion indicated that only 10th March, 1965, i.e., the date stipulated in the acceptance of tender could be taken as the date of default, as the delivery period originally stipulated was never extended by mutual consent”, and besides the notice dated 22nd January, 1966 issued by D.G.S.&D. “was unilateral”.

1.193. Indicating the progress made in recovery of general damages claimed from the firm amounting to Rs. 11,265, the Department of Supply have stated: “No recovery had been made so far from the defaulting firm but the D.G.S.&D. are awaiting reply from Secretary, Home (Police) Department, Government of West Bengal to letter dated 15th May, 1969 followed by reminder issued on 20th August, 1969.”

1.194. The Committee note that in this case “risk purchase” could not be effected within a period of six months, as the item in question was an imported store which was not readily available. The Committee cannot, however, help feeling that the Department erred in the first instance while placing the contract. The offer of the firm ex-stock was unsolicited besides being belated. According to tender procedure, it could not, therefore, have been entertained. Moreover, the recognised firms which were covered by the tender enquiry had all

stipulated import assistance. It was therefore inadvisable to have concluded a contract with a party who offered the material ex-stock, particularly when the offer, besides being unsolicited, was belated.

1.195. The Committee note that the question of recovery of general damages from the firm amounting to Rs. 11,265 is under correspondence. They would like to be apprised of the progress of recovery.

1.196. In connection with contract (iii), the Committee enquired why the order was placed with the firm without waiting for its capacity report. The Department of Supply, in their reply have indicated the following reasons:

- (i) the sample submitted by the firm, although rejected by the CIGC, Kanpur, was yet reported rectifiable provided the firm guaranteed to eliminate the defects in the bulk supplies;
- (ii) the firm undertook to eliminate the defects during bulk supply;
- (iii) the firm had successfully executed order for items of an allied nature, viz., Tawahs and was considered capable of manufacturing the stores;
- (iv) the capacity report was not forthcoming within a reasonable time and the Director acted in accordance with para 149(c) of the DGS&D Manual;
- (v) out of 6 tenders received, M/s. Dhur & Co's tender was the only acceptable one in that this firm was the only party that produced a sample as per the terms of the notice inviting tenders.

1.197. The Committee pointed out that there was an adverse capacity report about the firm made by the Inspector on 3rd June, 1964. The Committee desired to know why in spite of this, extensions were given to the firm repeatedly till 21st November, 1967. The Department have explained the position as follows:

"Unfortunately, the adverse capacity report was not put up immediately on receipt. Although the firm had tendered to supply the stores within 2 months of the receipt of order, yet immediately on receipt of the acceptance of tender they had amended the delivery period linking it with the receipt of raw material against the quota certificate so that they could supply the stores strictly as per specifications after removing defects.

The successive extensions of delivery period including the final extension, were given mainly because of the non-availability of steel sheets, a controlled item. The ultimate failure of the firm was primarily due to the fact that the required quantities of galvanised steel sheets could not be made available to them within reasonable time in spite of an Operational Priority granted by the Iron and Steel Controller. The difficulties in the procurement of steel sheets experienced by this firm would have also been experienced by any other firm."

It has been pointed out by Audit that the statement that the successive extensions were given mainly because of the non-availability of steel sheets is not wholly correct as the firm had failed to collect the raw materials from the controlled stockists who had offered them in August 1965 and agreed to extend the period of collection upto September, 1965. In December, 1965 the firm explained to the Directorate that its failure to collect the raw materials offered by the controlled stockists was due to abnormal market conditions consequent upon India-Pakistan conflict. ..

1.198. Asked whether legal advice was obtained after September, 1966, on the question of risk purchase and what action had been taken for recovery of general damages, the Department have stated: "Advice of the Ministry of Law was sought on 20th November, 1967 and they observed that the firm had defaulted in making supplies of the stores within the delivery period as last extended, i.e., 30th September, 1966. The breach of contract could, therefore, be taken to have occurred on that date. As the proposed risk purchase action fell outside the period of six months reckoned from the date of breach, there appeared no scope to enforce that purchase. Only general damages could be claimed. efforts were made by issuing enquiry to 31 firms, the indenter and the consignee to find out the rate prevailing on the date of breach with a view to effecting recovery of general damages, but from the replies received, the market rate prevailing on the date of breach could not be established. It has, therefore, not been possible to recover even the general damages. However, an amount of Rs. 1,147 deposited by the firm as security has since been forfeited."

1.199. This is yet another case where due to failure of the Department to obtain the supplier's concurrence to extensions of delivery date of the contract granted by Government suo moto, Government lost their "risk purchase" rights. The Committee have already made certain suggestions in this regard elsewhere in this Report and hope that they would be strictly implemented. Another point about this

point is that the Department failed to take notice of an adverse capacity report about the firm. The Committee regret to note the failure of Government in this regard.

Audit Paragraph

Purchase of defective equipment

1.200. In the following cases, equipment purchased have been defective and have not been put to use:—

- (a) Cold chambers—Based on an indent from the Director General of Inspection, Ministry of Defence, the Director General, Supplies and Disposals, placed an order for supply and installation of two cold chambers at two Defence inspection units at a cost of Rs. 82,500. The chambers received in October, 1965 have not been working satisfactorily due to defects which are yet (December 1968) to be rectified by the supplier who has been paid 80 per cent of the contract value. Due to the delay on the part of the firm to put the equipment in working condition, efforts were made to rectify the defects at its risk and expense, but these have not been successful (February 1969). In the mean-time, ice required for day-to-day work is being purchased locally.

[Paragraph No. 100(a), Audit Report (Civil), 1969.]

1.201. The Committee enquired what steps were taken to get the cold chambers repaired at the risk and expense of the firm. The Department of Supply have, in a note, furnished to the Committee, replied as follows: "The two cold chambers were inspected by a representative of Chief Inspectorate of Electronics, Bangalore at the firm's premises before despatch. However, after receipt of the units at site (Bangalore|Calcutta), the consignees pointed out defects for rectification of which the firm were addressed by the DGS&D on 21st January, 1967. A meeting was also held with the indenter and the firm on 22nd February, 1967 when the firm promised to attend to the defects in the two cabinets during March|April, 1967. The firm having failed to keep the promise, a registered notice was served on them on 26th September, 1967 for rectification by 16th October, 1967. They later confirmed the rectification of defects during October|November, 1967 and again during February, 1968. The indenter|consignees were still not satisfied and did not agree with the firm's statement... Now the indenter has confirmed the completion of repairs in respect of the chamber at Bangalore vide his letter dated 26th

August 1969. Similar information from the other consignee at Calcutta is still awaited. The last reminder was issued on 6th September 1969." The Department of Defence Production have informed the Committee that the cold chamber at Calcutta is still under repair.

1.202 To a question how the defects escaped notice during inspection, the Department of Defence Production have replied: "it may be stated that the cooling compressors and motor of the chambers are in a sealed system. Once the system is sealed and charged with gas it is not possible to check any internal details. The only check for cooling is to run the chamber and see whether the required temperature is attained within the stipulated time and the appropriate control settings. This is what was made sure by the representatives of Chief Inspectorate of Electronics, Bangalore."

1.203 The Department have further stated that the stores were accepted under warranty and defects reported during warranty period.

1.204. The Committee note that one of two cold chambers procured by the Defence Department in October, 1965 at a cost of Rs. 82,500 has not yet been commissioned, due to defects in the equipment. As the defects came to notice during the warranty period, the Committee would like Government to consider whether a replacement should be asked for, if repairs now stated to be under way are not soon completed satisfactorily.

NEW DELHI;

March 25, 1970

Chaitra 4, 1892 (S)

ATAL BIHARI VAJPAYEE,

Chairman,

Public Accounts Committee.

APPENDIX I

[Ref: Para No. 1.21 of the Report]

Extracts from DGS&D'S File No. CDN-2|9(4)|1|68

In the Seminar on Risk Purchase, a number of points had been raised.

(Point No. 5 was as under:—)

5. *If the firm has defaulted twice their offer against subsequent risk purchase to be rejected.*

It is considered that if a firm have defaulted twice, the risk purchase order should not be placed on them again for another time. They should not be given any more opportunity having failed twice because that itself appears to be sufficient basis to conclude that the firm is not capable for supplying. Whether or not the ignoring of the lower offers of defaulting firm (on the third occasion) would prejudice the right of purchaser to recover the risk purchase costs, the Law Ministry should be consulted in the matter. A deliberate administrative decision may be taken after obtaining the opinion of the Ministry of Law in the matter.

Sd/- SURYA PRAKASH.

20.8.68

2. In cases where the firm has defaulted twice, it would be possible to ignore its tender even though lowest. But, it would appear to be advisable to incorporate such a provision in the tender documents.

3. The circumstances under which the lower offers from defaulting firms could be ignored against a risk purchase tender enquiry, may vary from case to case. Generally speaking, it may be stated that grounds (b) (c) and (d) noted on p. 14/N may be considered to be good and cogent reasons for rejecting the offer of a defaulting firm, even though lowest. As for (b) on p. 14/N., namely the fact of the firm not having the necessary resources to execute the contract, I do not think it would be possible to reject the tender of the defaulting firm on the said ground. In any case, it would be a

question of fact whether the ignoring of the tender of the defaulting firm which happened to be lowest was justified and the burden of proof thereof would necessarily lie upon the Government.

Sd/- A. S. Chaudhuri

Joint Secretary and Legal Adviser 2.9.68.

3. Regarding point 5 viz. rejection of the offer of firm against risk purchase where the firm has defaulted twice, the Law Ministry have advised that it would be possible to ignore tender even though it may be lowest. It has, however, been suggested that it would be advisable to incorporate such a provision in the tender documents. In view of the fact that there is no legal bar to ignoring of such tenders, we may follow this principle in future. Instead of incorporating such a provision in the tender documents in the risk purchase enquiry, it would be appropriate if the provision to this effect is made in the general conditions of contract contained in DGS&D-68 (revised). It is suggested that the following line may be added at the end of clause 14(7) (iii) of DGS&D-68 (Revised).

“Even by ignoring the lowest tender from the firm which has defaulted twice.”

4. If the above suggestion is approved, the proposed addition would be got vetted by the Ministry of Law before the file is submitted to the Department of Supply.

5. Instructions regarding point 6 may be issued as suggested *vide* notes at pages 13-15/*ante*, read with Law Ministry's observations at page 17/*ante* (Para 3), after the proposals are seen and approved by DG/Department of Supply.

Sd/- M. M. PAL,

DD (CS-1)—12.9.68

Director (Cdn.)

Ministry of Law.

Discussed with Director (Cnd.). He expressed that the proposed addition to clause 14(7) (iii) of DGS&D-68 (revised) gives an impression that the contractors would by right be entitled for placement of contract against the risk purchase tender if they happen

to be the lowest and have defaulted only once. It was, therefore, felt that the word "twice" should be omitted from the proposed addition. In other words the addition should read as under:—

"even by ignoring the lowest tender from the firm which has defaulted."

Simultaneously administrative instructions should also be issuing laying down that in the case of placement of risk purchase order on a firm which has defaulted only once, the procedure laid down in para 4(d) of the consolidated office order No. 11 dated 25.1.68 should be followed and where the firm has defaulted twice, the provisions of the proposed addition to clause 14(7) (iii) should be invoked and their offer ignored for placement of order even though they may be the lowest. We may place these observations before the Ministry of Law for their consideration.

Sd/- M. M. PAL

Dy. Director (CS-1)
16.9.68.

Dir. (CDN) Sd/- 16.9.68.

Ministry of Law

U.O. No. CDN-2|9(4)|1|68 dated 17.9.68.

It is stated that the addition of the words "even by ignoring the lowest tender from the firm which has defaulted twice" to clause 14(7) (iii) may give the impression that the contractors would as of right be entitled for placement of contract against the risk purchase tender if they happen to be the lowest and have defaulted only once. In the circumstances, it is suggested that the word "twice" may be omitted from the proposed addition. If the word "twice" is proposed to be omitted, I do not see any particular purpose in the addition of the proposed words to clause 14(7) (iii). Addition of the said words would appear to serve no purpose for, admittedly, under the well-recognised principles and procedure, we have been ignoring the lowest tender of the defaulting firm in certain particular contingencies. If, however the intention is that the tender of the firm, which has defaulted twice, is in any case to be ignored, the clause can be properly worded so as to eliminate any impression to the effect that a defaulting contractor who has defaulted only once, would as of right be entitled to the contract, if

he happens to be the lowest. The matter is, however, one for administrative decision and consideration.

Sd/- A. S. CHAUDHRI,
Joint Secretary and Legal Adviser
19.9.68

Discussed with Contract Officer. He has suggested the following clause to be added at the end of clause 14(7) (iii) of DGS&D-68 (Revised):

"If the contractor has defaulted in performance of his original contract, his tender for risk purchase is liable to be ignored, even though lowest, at the option of the Secretary."

We may request the Ministry of Law kindly to see the above proposed clause.

Sd/- SURYA PRAKASH
11.10.68

DD(CS-1) Sd/- M. M. PAL 11-10-68
Dir (Cdn) Sd/- V. SUBRAMANIAN 14-10-68

Min. of Law

U.O. No. CDN-2/9(4) |1|68 dated 14.10.68

The proposed clause implies that it would be open to reject the tender of a firm, even though lowest, even if it was a case of first default only. If such an action is taken, it would not be possible to sustain the risk purchase.

Sd/- A. S. CHAUDHRI,
19.10.68

DGS&D

M|Law. 36676/68 dated 23.10.68

DGS&D (CDN 2 Section)

Contract Officer may kindly see Law Ministry's note above with reference to note on prepage. He may kindly suggest a revised clause.

DD (CS-1) Sd|- M. M. PAL Sd|- S. PARKASH 30.10.68
Cont. Officer 30.10.68

If the firm agrees to this condition, there would seem to be no

legal impediment to implementation—as far as I can see. I'll discuss this matter on my next visit i.e. 31-10-68.

Sd/- M. A. SUJAN
30-10-68

Ministry of Law—Shri A. S. Chaudhury JS & LA

I have discussed this case with Shri A. S. Chaudhri, JS&LA. He agrees that there is no legal impediment in stipulating the proposed condition.

2. I have discussed this case with D.G.

3. The condition to be added at the end of clause 14(7) (iii) of DGSD-68 (Revised) may be as follows:—

“If the contractor has defaulted in performance of his original contract, it is hereby agreed that the purchaser has the right of ignoring his tender for risk purchase even though the lowest.”

4. It is suggested that the decision to ignore such a tender may be taken at a sufficiently high level to ensure that the right given to the purchaser is properly used.

Sd/- M. A. SUJAN
Contract Officer & OSD (Lit)
November 14, 1968.

D.G. Sd/- P. C. BHAGAT,
14.11.68

3. Regarding point 5 viz. rejection of the offer of firm against risk purchase where the firm has defaulted twice, the Law Ministry have advised that it would be possible to ignore tender even though it may be the lowest. It has, however, been suggested that it would be advisable to incorporate such a provision in the tender documents. In view of the fact that there is no legal bar to the ignoring of such tenders, we may follow this principle in future. Instead of incorporating such a provision in the tender documents in the risk purchase enquiry it would be appropriate if the provision to this effect is made in the general condition of contract contained in DGS&D-68 (Revised). The matter has been discussed by the Contract Officer with Shri A. S. Chaudhari, Joint Secretary and Legal Adviser in the Ministry of Law and it has been agreed that the following may be added at the end of clause 14(7) (iii) of DGS&D-68 (Revised):—

“If the contractor has defaulted in performance of his original contract, it is hereby agreed that the purchaser has

the right of ignoring his tender for risk purchase even though the lowest."

DD (CS-1) Sd/- M. M. PAL 19.11.68 Sd/SURYA PRAKASH
Dir (Cdn.) 16-1-68

Words 'it is hereby agreed' in the text at 'X' above do not appear to be appropriate for inclusion in DGS&D Form 68. We may get it vetted by the Ministry of Law (Conveyance Br.).

Sd/- R. K. SINGHAL
19-11-68

DD (CS-1)

Min. of Law (Conveyancing Branch)

UO No. CDN2|9|(4)|1|68 dated 19.11.68

Notes in the Ministry of Law Department of Legal Affairs Advice
(A) Section

We would like to change the wordings of the proposed condition suggested by the Contract Officer, O.S.D. (Lit) as indicated below:

"If the contractor had defaulted in the performance of the original contract, the purchaser shall have the right to ignore his tender for risk purchase even though the lowest."

2. The alterations were discussed with Shri A. S. Chaudhuri, Joint Secretary and Legal Adviser who concurs.

Sd/- A. DAS GUPTA,
Addl. Legal Adviser 23-11-68

APPENDIX II
Summary of main Conclusions/Recommendations

Sl. No.	Para No. of Report	Ministry/Department concerned	Conclusions/Recommendations
1	2	3	4

22

Supply (DGS&D).

In the opinion of the Committee, this case raises a number of important issues:

- (i) The firm with whom a contract for 46,000 Nos. of the store was placed at a unit price of Rs. 15.31 in January, 1964, did not supply more than 19,500 Nos. They, however, supplied identical stores against two other contracts placed with them subsequently in October, 1966 and April, 1967 at unit prices of Rs. 36.65 and Rs. 34.65 respectively. To help the firm to complete the supplies against the first contract, the release of 34.78 tonnes of copper, a scarce metal, was arranged by Government even though the contract contained no provision for it. However, after availing of this facility, the firm did not make any further supply against the first contract. Government have stated that the copper supplied to the firm against the first contract was not "apparently" utilised for making supplies against the two subsequent contracts, which provided for

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much higher unit prices, but the firm had admitted that unutilised stocks of the metal are "still lying with them". The Committee also observe that the firm have had "various other orders" from the Railways for similar stores against which release of copper had been obtained by them on the basis of import licences. The Committee would like it to be comprehensively investigated how the firm have utilised the material supplied to them against all the orders placed with them since 1964 and to be apprised of the results of the investigation.

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Supply
(DGS&D)

(ii)

The provisions of the contracts executed with suppliers generally provide for the stores being purchased at the risk and expense of the supplier, in the event of his defaulting on delivery. The Committee observe that in this case, on both the occasions on which "risk purchase" tenders were invited, after the firm defaulted, the defaulting firm quoted and ultimately the "risk purchase" order was placed on them. It seems anomalous that when a firm has defaulted in making supplies and purchases are being made at its "risk and expense", the defaulting firm should get the risk purchase order. The Committee appreciate that, under the provisions of the standard terms of tender

and contract as they now stand, Government may be obliged to give the defaulting firm this opportunity, but they would like it to be examined whether, by appropriately amending the terms of tender and/or contract, it would be possible to ensure that a defaulting firm is debarred from getting the "risk purchase" order. From copies of legal opinion on the subject which were furnished to the Committee, they observe that there may be "no legal impediment to implementation" of this suggestion, if a firm "agrees to this condition."

3 1.22

—Do—

(iii) Legal opinion is fairly well settled that an order placed at the 'risk and expense of the firm', as a result of its breaching the terms of delivery stipulated in a contract, should be placed within six months of the date of breach. It is also well settled that the date of breach is to be reckoned with reference to the date of delivery which is mutually agreed upon between the supplier and Government. In the present case, Government extended the date of delivery stipulated in the contract *suo moto* upto a period of two years, with the result that their "risk purchase" rights were prejudiced. While the Committee appreciate that Government will have to take a practical view of situations that arise in the course of dealing with 12,000 to 15,000 contracts in a year and that in certain cases *suo moto* extensions cannot be avoided in a "bona fide effort to

procure the stores", they would like to stress that Government should in such cases obtain expeditiously the suppliers' concurrence to extensions given *suo moto*, so that their risk purchase rights are not jeopardised.

4 I.22

Supply
(DGS&D).
Law

(iv) The legal opinions that were given in this case about the date of breach for the purpose of "risk purchase" were contradictory. In May, 1967, when legal opinion was sought on the question of cancellation of the contract, at the risk and expense of the contractor, the opinion given was that the date of delivery stood extended upto 15th September, 1967 and that, therefore, the "cancellation of acceptance of tender prior to the expiry of the extended delivery period would not be legally in order". However, subsequently, in November, 1967, after the firm had finally defaulted, the legal opinion was that "the date of breach can be only the last extended delivery date, viz., 15th September, 1965 (which was mutually agreed upon). Since date of breach is over six months back, there can be no question of risk purchase". The Committee hope that due care would be exercised before legal opinions are given, so that the Department of Supply is properly guided in any action that they may take in terms of a contract,

(v) Though Government would appear to have lost their "risk purchase" rights in this case, it would appear that in terms of the legal opinion given, "general damages can be claimed, the measure of which will be the difference between the contract rate and market rate on the date of breach." The Committee would like action to be speedily initiated for recovering such damages from the firm.

(vi) The Committee would also like action to be taken for utilisation/recovery of 12.308 tonnes of Copper lying unutilised with the firm.

The Committee feel that a series of omissions resulted in Government being saddled with a supply of about 75,000 helmets, the bulk of which, costing Rs. 4.88 lakhs, have been found "absolutely useless."

In the first place, the specifications evolved for the helmets by the Indian Standards Institution were faulty. There was a "vital mistake" which arose due to a "confusion.... mainly with regard to the major axis and minor axis" of the helmets.

The helmets produced according to the specifications therefore turned out to be over-sized that "the larger helmets could not fit anybody except perhaps the astronaut." Besides, the specification permitted the use of thermoplastic material which caused other defects in the helmets like sagging etc. It has been stated that the specifications were drawn up in a "great hurry" within 15 days, as

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(DGS&D)

Home
(DGCD)

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against 52 months which is required on an average for formulation of standards, but the Committee fail to understand even then how a vital and elementary detail like the size of the helmet was not adequately investigated before formulating the specifications. It is even more regrettable that such faulty specifications should have been drawn up, when the requirement was in connection with the Emergency, which arose in 1962, and that it was left to a foreign party to point out, after a lapse of three years, that the sizes evolved were not correct.

In the second place, the fact that the helmets were over-size escaped notice even at the stage a prototype produced by the firm was tested. A host of tests like "performance test", "penetration test" and "inflammability test" were carried out, but nobody investigated whether the helmets would suit various head-sizes. It is astonishing that this simple user's test was not carried out even at a subsequent test when the helmets were tendered for inspection against the contract. The explanation that "the person who had tried it thought that it (the helmet) was supposed to be worn on the turbans or something else" is ingenious but unconvincing.

Thirdly, the specifications drawn up for the purpose of the contract themselves departed in some respects from the I.S.I. specifica-

tions from which they were derived. The I.S.I. specifications had provided for the helmets being fitted with adjustable head-bands, the provision of which might have rendered part of the helmets supplied usable but due to an omission on the part of the indenting authority as well as the authority which processed the indent, this was "unfortunately lost sight of".

Fourthly, the supply itself would appear to have deviated from the specifications in certain respects like wearing height etc.

Lastly, "serious notice" was not taken of the complaints which were received from the users initially about the size of the helmets. The first complaint was received in January, 1965 when only 1,884 helmets had been supplied and it would appear that this complaint was received not only by the indentor but also in the Directorate General of Supplies and Disposals. It was only after complaints from other users started coming in that the matter was investigated and steps taken to stop further supplies, but by that time nearly 75,000 helmets had been either supplied or were ready.

The Committee note that the officials who were connected with the formulation of the standards are now "dead and gone". But in regard to the other omissions that occurred, the Committee would like an investigation to be made and responsibility fixed.

8 1-39

Supply
(DGS&D)

Home
(DGCD)

The Committee also observe that efforts are under way, in consultation with the indenter and the supplier, to render the helmets usable. The Committee would like to be informed of the outcome of these efforts.

The Committee note that under the terms of the contract foreign exchange to the tune of Rs. 2.43 lakhs was to be provided by Government to the supplier for import of raw materials required for supply of the contracted goods. Pending issue of licence, the supplier was asked to use raw materials from his own stocks. The firm has now sued Government for the difference between the landed cost of raw materials today and the cost as on the date of submission of tender or in the alternative pay compensation/damages to the tune of Rs. 5.85 lakhs. As the matter is sub-judice, the Committee would like to reserve their comments on the various issues arising out of this case pending the outcome of the suit, which may be intimated to them.

The Committee observe that licence was issued to the firm in this case for Rs. 7.06 lakhs to import various quantities of non-ferrous metals required for supply of 152 tonnes of lead bronze ingots. Due to rise in the international prices of non-ferrous metals, the firm could not import the full quantities of metals, even

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(DGCD)

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Supply (DGS&D)
Finance (Deptt. of-
Economic Affairs)

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after availing of the licence in full and the quantity of ingots on order with the firm had to be reduced from 152 tonnes to 101.93 tonnes. The foreign exchange was released in this case in October, 1963 and April, 1964, the contract placed in July, 1964 and the import recommendation certificate issued in August, 1964. The time-lag that occurred at the various stages apparently operated to the detriment of Government. The international metal market is a highly sensitive one, where prices are prone to severe fluctuations day by day.

It is, therefore, essential that decisions regarding release of foreign exchange and issue of import licences are taken with the utmost expedition, in respect of contracts which involve import of metals, so that Government's interests are not adversely affected. The Committee trust that, based on their experience in this and other cases, Government would take steps to streamline procedures for release of foreign exchange and issue of import licence in respect of contracts which involve dependence on foreign metal markets.

12. 1.58

Supply
(DGS&D)

The Committee note that in respect of two contracts placed with the firm, where import assistance to the tune of Rs. 12.78 lakhs was provided by Government for import of scarce non-ferrous metals, Government "suspects" malpractices in the utilisation of import metals. During evidence it was also stated that "similar malpractices" by the firm had occurred in "another case". In the

light of this position, the Committee would like Government to investigate thoroughly how the firm utilised non-ferrous metals worth about Rs. 25 lakhs which were imported by it on the basis of import licences issued by Government in connection with the five contracts mentioned in the Audit paragraph. The Committee would like to be apprised of the results of the investigation and action taken on its findings.

13. 1.59

Supply
(DGS&D)

On the basis of experience of this case the Committee would like Government to consider what safeguards should be built into contracts which involve import assistance, so that the contracting firms do not derive unintended benefit by retaining unutilised raw materials imported for the purpose with Government assistance.

14. 1.68

—Do—

The Committee are unable to understand how a price preference clause was included in the contract in this case. A clause of this nature is incorporated in a contract when a higher tender is preferred to a lower acceptable tender, in consideration of more

attractive delivery terms offered by the higher tenderer. The clause then serves to protect Government's interest in the event of delay/default in delivery by the contractor. In the present case, the period of delivery offered by the higher tenderer, with whom the contract was placed, was longer compared to the lower tenderer. The representative of the Department of Supply admitted during evidence that, in these circumstances, the incorporation of the clause in the contract was not very appropriate.

1.69

—Do—

The Committee, however, observe that the legal opinion given to Government is that, though the clause was not "attracted" in this case, it was still part of the contract, as the clause was part of the tender conditions which the firm accepted while submitting their tender. However, when the acceptance of tender was conveyed, the firm objected to the clause and returned the acceptance of tender, stating that there was no concluded contract. As a result, Government had to purchase the stores from alternative sources at an extra cost of Rs. 60,200; the liability for this amount has been contested by the firm in a court. The Committee would like to be apprised of the outcome of this case.

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1.70

—Do—

In the Committee's opinion this case indicate that the official(s) who was/were responsible for finalising the contract was ignorant of the implications of the provisions included in the contract. The Committee trust that instances of this kind will not recur.

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1.90

Supply
(DGS&D)

The Committee consider it unfortunate that a firm "fraudulently obtained" a advance payments amounting to Rs. 2.84 lakhs for supplies which were not effected by it. The payments were made on the basis of claims which bore reference to Railway Receipts under which the stores were purported to have been despatched, but, on investigation, it turned out that the Railway Receipts had not been sent by the firm to the consignees to enable them to take delivery of the stores. The matter came to notice, when 1 out of 66 consignees defrauded complained.

This is not the only case which has come to the notice of the Committee. In their First Report (Fourth Lok Sabha), the Committee had commented on a case where a firm had fraudulently obtained advance payments amounting to about Rs. 1.85 crores against supplies of road-rollers which were not made by them.

1.91

—Do—

The Committee appreciate that, while the magnitude of the fraud involved in these cases may be large, it does not warrant the stoppage of advance payment facilities which are being extended to firms. The representative of the Department of Supply pointed out to the Committee that, during the last 22 years, there have been "only 36 cases" of this type, involving a total sum of Rs. 2.23 crores, which "works out to 0.04 per cent" of the total purchases made.

But the Committee do feel that the procedures evolved on the basis of these cases need to be implemented promptly. How tardy the implementation of the procedures has been would be evident from the facts of the present case. The procedure evolved provided for the Pay and Accounts Officer sending a debit intimation memo after making payments to a firm. There were as many as 66 consignees, who received these intimations in this case, but only one complained and it was his complaint which, on investigation, brought to light this fraud. In the Committee's opinion, this suggests that neither the Directorate General of Supplies and Disposals nor the consignee progressed the contract in this case with vigilance or alertness. Had they done that, the fraud might well have come to light earlier. The Committee hope that instructions would be issued to ensure that the revised procedures evolved to stop cases of fraudulent payments of this type would be strictly enforced. The Committee would also like Government to investigate the circumstances under which the consignees in this case failed to progress the contracts and to take suitable action thereafter.

The Committee note that in the present case, court proceedings have been initiated, on the basis of investigations conducted by the Central Bureau of Investigation. The Committee would like to be apprised of the outcome of the proceedings, as also the progress made in the recovery of payments from the firm.

18 1.93 Supply
(DGS&D)

According to Rule 16 of the General Financial Rules of the Central Government losses, frauds etc. noticed by government officers have to be "immediately reported" to the Audit. In this case, fraud amounting to Rs. 2.84 lakhs was not brought to the notice of Audit. The Committee would like to be apprised of the reasons for not doing so and the action taken against the defaulting officers.

19 1.102 Supply (DGS&D)
Finance (Deptt. of
Economic Affairs)

The Committee observe that a series of delays occurred in this case. The indent, with prior foreign exchange sanction, was received in the Directorate General of Supplies and Disposals in July, 1964. The Directorate took over a year to conclude the contract for the component items in the indent and by the time this was done, the foreign exchange sanctioned valid for a year, had lapsed. As a result, the firm could not be provided with the requisite import licence immediately after conclusion of the contract in October, 1965. The indenting authority was apparently not aware of the provisions of the latest orders relating to validity of foreign exchange sanctions and a result further time was lost in correspondence till in April, 1966 it was settled that revalidation of the old sanction for foreign exchange was necessary. The revalidation took a further period of six months and by the time the firm could be provided with import licence (February, 1967), the price of

the store had "escalated" in terms of the contract by Rs. 1.03 lakhs. What is more regrettable is that delays of this order occurred in processing a case relating to a requirement of the Defence Services.

1.103

—Do—

The Committee have elsewhere in this report stressed the need to ensure that import assistance in terms of contracts is expeditiously made available to contracting parties. In regard to Defence requirements, the Committee have, in para 5.86 of their Sixty-Ninth Report (Fourth Lok Sabha), emphasised the need for suitable procedures to eliminate delay in release of foreign exchange. The Committee hope that the matter will be kept continuously under review, so that bottlenecks at the stage of release of foreign exchange and issue of import licences do not adversely affect Government's interest *vis-à-vis* contracting parties.

20

1.113

Supply
(DGS&D)

The Committee are surprised to find that negotiations were conducted by the Director General, Supplies and Disposals with the firm in connection with this contract, even though business dealings with the firm had been earlier suspended by his office for its involvement in a case of forgery. It was stated that the officials who dealt with the case were not aware that business dealings with the firm had been suspended, but, as was conceded during evidence, this is an "indefensible" position. The Committee note that action has been taken against the officials for this and other failure mentioned in the preceding Section of the Report. To obviate recurrence of cases of this type, the Committee would like Government to con-

sider whether all officers concluding contracts on behalf of Government should be asked to maintain an upto-date list of firms with whom dealings have been banned/suspended etc., if instructions to this effect do not already exist.

21

I. 114

Supply (DGS&D)
Home

The Committee observe that the Special Police Establishment is investigating the case of forgery in which the firm is suspected to be involved and that final action against the firm will be taken after the results of investigation become known. The Committee would like to be apprised of the further developments in this regard.

Affairs (Special
Police Establishment)

I. 115

Supply
(DGS&D)

The Committee also feel that there was delay in this case in coming to a decision on the tenders and in taking other preliminary action connected therewith such as calling for reports on the capacity of the tenderers. The Committee note the assurance of the Department that "a series of steps has been taken based on this case and there will be no delay." The Committee trust that these procedures will be strictly adhered to in the interest of expeditious conclusion of contracts and their smooth execution.

23

I. 130

Supply
(DGS&D)

The Committee observe that the firm in this case had initially undertaken to supply 2,00,000 Nos. of a particular store

at Rs. 5.05 per cent. Ultimately what they supplied after a protracted period of delay was 90,000 Nos. of the store for which the unit price paid was Rs. 6.50. As the store was a developmental item required for Defence purposes, and as adequate sources of alternative supply had yet to be developed, the Committee appreciate the difficulties that Government faced in the case. The Committee would, however, like to point out that Government's position *vis-a-vis* this firm was rendered vulnerable due to the terms of the contract placed with them being at variance with the terms of the firm's offer, in the matter of delivery of stores. This created a situation in which there was no concluded contract, with the result that Government could not pin the supplier to his original terms in the matter of price or other conditions of supply. The Committee have elsewhere in this report drawn attention to other instances of contracts not being placed with firms in terms of their offer as settled by tender or negotiation. The Committee hope that adequate precautions would be taken by Government to guard against recurrence of such cases.

Supply (DGS&D) From the information furnished by Government, the Committee observe that huge amounts are being paid every year as demurrage at Calcutta Port due to delay in clearing consignments received at the Port which are being cleared by the Department of Supply. The total amount paid as demurrage between 1962 and 1967 was Rs. 139.40 lakhs. Since 1967, the demurrage paid has amounted to Rs. 23 lakhs annually. To what extent the clearance of consignments was delayed would be evident from the fact that

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between 1962 and 1965 40 per cent of the consignments cleared at the Port incurred demurrage. In 1966, demurrage was paid approximately on 30 per cent of the consignments and in 1967, on 2 per cent.

25 I. 145

Supply (DGS&D)
Finance (Deptt. of Audit
Revenue)
Transport &
shipping

An examination of the four sample cases mentioned in the Audit paragraph suggests that the following factors have generally been contributing to delay in clearance of consignments:

- (i) Delay in obtaining delivery orders from steamer agents on account of delay in settlement of their bills.
- (ii) Delay in payment of port charges by consignees particularly semi-Government parties who do not maintain sufficient balances in their deposit account with the Port.
- (iii) Time taken by Port Trust authorities in giving permission for movement of packages.
- (iv) Time taken by Customs for examination of packages.

26 I. 146

—Do—

The Committee note that instructions have been issued by Government from time to time with a view to avoiding delay in clearance of consignments. The Committee trust that, through better coordination with the steamer agents, Port and Customs

(a) 29.4 Percent	} According to Audi'
(b) 34.8 Percent	
(c) 43.1 Percent	

authorities and consignees, Government will be able to minimise such delay in clearances, if not avoid them altogether.

25 1.153 Supply
(DGS&D)

The Committee observe that due to a lapse, a contract was placed on a firm, some of the conditions of which were at variance with the tender on the basis of which the contract was placed. In the result, there was no validly concluded contract and when the firm defaulted the Department could not take action for recovery of the extra cost of Rs. 4.10 lakhs incurred on purchase of the stores from alternative sources. As departmental action has been taken and the defaulting firm has also been de-registered, the Committee do not wish to pursue the case further. The Committee, however, trust that Government would, in the light of their experience in this and other cases, reinforce their purchase procedures to ensure that contracts are placed strictly in terms of offer of parties, as tendered or negotiated, so that Government's rights are fully protected in any eventuality.

26 1.166 Supply (DGS&D)
Transport & Shipping

The Committee feel that, with a little care, Government could have avoided procurement of 7 of the 25 winches costing Rs. 2.75 lakhs, procured against the contract placed in July, 1965, which subsequently became surplus. The contract for the winches which were required for the Lateral Road Project between Amin-gaon and Bareilly* stipulated delivery by 31st August, 1965. Due

*The issues arising out of the procurement of machinery for this project along with other matters have been dealt within the Forty-Second Report (Fourth Lok Sabha) and Eighty-Sixth Report (Fourth Lok Sabha).

to delay in approval of the prototype, the delivery period was later refixed as 15th April, 1966. In August, 1966, Government had decided to slow down the tempo and execution of the project, as a result of which a substantial part of the machinery originally indented for became surplus. It is not, therefore, clear why, in September, 1966 and December, 1966, further extensions of delivery dates were agreed upon. The Ministry of Transport which was the indenter, could well have reduced their requirements at this stage, even if they had to agree to the extension. The Committee would like to be informed as to why this was not done.

Supply
(DGS&D)

In regard to the second contract placed in March, 1966 for 12 winches, the Committee find that, though the supply against the contract was cancelled, the firm had to be accommodated through a rate contract which was concluded with it in November, 1967. As a result of the cancellation of the supply against the contract dated March, 1966, Government had lost a discount of Rs. 0.77 lakh which had been originally agreed to by the firm. The delivery date stipulated in the contract was 15th June, 1966, but, in January, 1967, it was extended to 15th March, 1967. It would appear, however, that, in the meanwhile, the indenter had, in October, 1966 intimated that supplies would not be required. The Committee would like Government to find out why, after this communication had been

30 I. 183 Supply
(DGS&D)

The Committee are unable to understand how, after having extended the periods of delivery stipulated in the contracts, Government could cancel the contracts before expiry of the extended delivery periods. This action resulted in Government forfeiting their claim against the firm for extra cost of Rs. 1.51 lakhs which they incurred on purchases of the unsupplied materials from alternative sources, as according to legal opinion, the contracts had been cancelled in anticipation of their breach. It has been stated that the contracts had to be cancelled and the unsupplied quantity off-loaded to other firms, as "the firm were not able to produce satisfactory material due to complete breakdown of their dyeing plant." Besides, "it was clear in the minds of the purchase officers that the firm would not be able to meet their contractual obligations and other established sources of production had to be kept going." If this was so, a proper assessment of the position should have been made before the extension of the delivery dates was agreed to by Government. The Committee note that the case after investigation at "the highest level" has been closed after accepting discounts amounting to Rs. 45,240 offered by the firm. The Committee hope that Government would ensure, in the light of their experience in this case, that contracts are cancelled and risk purchase orders placed only after fully complying with the due legal requirements.

The Committee find that, in this case, the "risk purchase" rights of Government were prejudiced, due to a failure to comply with the legal requirements in this regard. The date of delivery mutually agreed upon between the supplier and Government was, 15th July, 1966, but a *suo moto* extension was granted by Government till 5th September, 1966, for which concurrence was not obtained. In the result, when the firm failed to effect supply, Government could not make "risk purchase" at the expense of the firm, as by that time six months from 15th July, 1966, i.e., the mutually agreed date had elapsed.

The Committee have dealt with similar cases of this type elsewhere in this Report. The Committee trust that steps would be taken to instruct purchase officers adequately about the legal requirements to be complied with in the matter of risk purchases.

The Committee note that in this case "risk purchase" could not be effected within a period of six months, as the item in question was an imported store which was not readily available. The Committee cannot, however, help feeling that the Department erred in the first instance while placing the contract. The offer of the firm ex-stock was unsolicited besides being belated. According to tender procedure, it could not therefore have been entertained. Moreover, the recognised firms which were covered by the tender enquiry had all stipulated import assistance. It was therefore inadvisable to have concluded a contract with a party who offered the material ex-stock, particularly when the offer, besides being unsolicited, was belated.

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- 33 1.195 Supply (DGS&D) The Committee note that the question of recovery of general damages from the firm amounting to Rs. 11,265 is under correspondence. They would like to be apprised of the progress of recovery.
- 34 1.199 —do— This is yet another case where due to failure of the Department to obtain the supplier's concurrence to extensions of delivery date of the contract granted by Government *suo moto*, Government lost their "risk purchase" rights. The Committee have already made certain suggestions in this regard elsewhere in this Report and hope that they would be strictly implemented. Another point about this case is that the Department failed to take notice of an adverse capacity report about the firm. The Committee regret to note the failure of Government in this regard.
- 35 1.204 Supply (DGS&D) of Defence (Deptt. of Defence production) The Committee note that one of two cold chambers procured by the Defence Department in October, 1965 at a cost of Rs. 82,500 has not yet been commissioned, due to defects in the equipment. As the defects came to notice during the warranty period, the Committee would like Government to consider whether a replacement should be asked for, if repairs now stated to be under way are not soon completed satisfactorily.