

PUBLIC ACCOUNTS COMMITTEE (1977-78)

(SIXTH LOK SABHA)

TWENTIETH REPORT

**PURCHASE OF TENTS, ASSEMBLY SPRINGS,
ANGOLA SHIRTING AND GUN METAL INGOTS**

DEPARTMENT OF SUPPLY

**[Paragraphs 38, 39, 41 and 42 of the Report of the
Comptroller & Auditor General of India for the
year 1974-75, Union Government (Civil)].**



Presented in Lok Sabha on 16 Dec. 1977

Laid in Rajya Sabha on 16 Dec. 1977

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Part II

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Part II*

Minutes of the Public Accounts Committee held on 7-12-1977.

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

PUBLIC ACCOUNTS COMMITTEE
(1977-78)

Shri C. M. Stephen—*Chairman*

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*Elected w.c.f. 23-11-1977 vice Sarvashri Sheo Narain and Jagdambi Parsad Yadav
ceased to be Member of the Committee on their appointment as Minister of State.

(iv)

19. Shri Piare Lall Kurcel *urf* Piare Lall Talib
20. Shri S. A. Khaja Mohideen.
21. Shri Bezawada Papireddi.
22. Shri Zawar Hussain.

SECRETARIAT

1. Shri B. K. Mukherjee—*Joint Secretary.*
2. Shri T. R. Ghai—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Twentieth Report of the Public Accounts Committee (Sixth Lok Sabha) on paragraphs 38, 39, 41 and 42 relating to 'Purchase of Tents, Assembly Springs, Angola Shirting and Gun Metal Ingots' included in the Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Civil).

2. The Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Civil) was laid on the Table of the House on 26 March, 1976. The Public Accounts Committee (1976-77) obtained the information relating to these paragraphs but could not finalise this Report on account of dissolution of the Lok Sabha on 18 January, 1977.

3. The Public Accounts Committee (1977-78) considered and finalised this Report at their sitting held on 7 December, 1977 based on written information furnished by the Department of Supply. The Minutes of the sitting form Part II* of the Report.

4. For facility of reference the conclusions/recommendations of the Committee have been printed in thick type in the body of the Report. For the sake of convenience, the recommendations/observations of the Committee have also been reproduced in a consolidated form in Appendix.

5. The Committee place on record their appreciation of the commendable work done by the Public Accounts Committee (1976-77) in obtaining information for the Report.

6. The Committee also place on record their appreciation of the assistance rendered to them in the examination of these Audit Paragraphs by the Comptroller & Auditor General of India.

7. The Committee would also like to express their thanks to the officers of the Departments of Supply and Legal Affairs for the cooperation extended by them in giving information to the Committee.

NEW DELHI ;
December 9, 1977

C. M. STEPHEN,
Chairman,

Agrahayana 18, 1899(S)

Public Accounts Committee.

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

CHAPTER I

PURCHASE OF TENTS

Audit Paragraph

1.1. In October 1965 it was assessed by an inspector of General Stores of the Defence Department that 'A' had capacity to produce outer flies of tents worth Rs. 5 to Rs. 7 lakhs per month. On 17th January 1966, an acceptance of tender was placed on 'A' for supply of 3,000 outer flies of tents at Rs. 871 each (total cost : Rs. 26.13 lakhs) to Ordnance Depot, Mathura by 31st March 1966. In June 1966, the delivery period was extended up to 30th September 1966. 'A' however, offered only 900 outer flies of tents for inspection till 30th September 1966. In November 1966, the Director General Supplies and Disposals observed that 'A' had capacity to produce only about 500 outer flies of tents per month and that the period of two and half months originally allowed to it for supplying 3,000 outer flies of tents was unrealistic. The delivery period was further extended (December 1966) initially upto January 1967 and then again (February 1967) upto March 1967.

1.2. A standby risk purchase tender enquiry was also issued in February 1967 for purchase of outer flies of tents not supplied by firm 'A'. The lowest offer of Rs. 1,129 per outer fly of tents against this enquiry was from 'B' for supply of tents valuing Rs. 2 lakhs per month on an average, including supplies against pending orders, commencing after 60 days from the date of receipt of confirmation order. Expectation of the Director General, Supplies and Disposals was that supply would be completed by 'B' by May/June 1968. The second lowest offer of Rs. 1,130 each was from 'A'. Although by March 1967 only 25 more outer flies of tents were supplied by 'A' instead of making risk purchase of the remaining tents further extension of delivery period upto 31st December 1967 was allowed to 'A' as it represented on 30th March 1967 that not only the prices of raw materials and dyes had increased but also these were not readily available even at the high prices. Fifteen more outer flies of tents were supplied by 'A' by December 1967. Thereafter, no further supply was made by 'A' although the period of delivery was extended (November 1967) upto 30th June 1968. Order for the remaining 2,060 outer flies of tents was cancelled in October 1968 at the risk and cost of 'A'.

1.3. In the meantime a standby limited tender enquiry was issued on 22nd July 1968 for effecting risk purchase. The lowest quotation of

Rs. 870 each against this tender enquiry was from 'C' a sister concern of 'A'. The second lowest quotation was from 'A' at the rate of Rs. 871 each.

1.4. On 30th October 1968 order for 2,060 outer flies was placed on 'C'. No supply was made by 'C'. As however, the acceptance of tender was not in conformity with the tender of 'C' about arbitration, quantum of liquidated damages etc. no action could be taken against it, and the acceptance of tender was cancelled in June 1970 without financial repercussion on either side.

1.5. For purchase from 'C' at the rate of Rs. 870 each there would not have been any extra cost as the price allowed to 'A' was more.

1.6. However, a sum of Rs. 11,842 was decided to be recovered from 'A' as pre-estimated damages for delay in supplies. Out of this, Rs. 7,850 were waived (October 1969) as there were delays in inspection.

1.7. On the basis of tenders received in August 1970 against a limited tender enquiry (July 1970), an order was placed on 'D' by telegram on 18th November 1970 for supply of 2,060 outer flies of tents at Rs. 1,297.50 each. The formal acceptance of tender was issued on 13th January 1971. On 15th January 1971, 'D' intimated by telegram that it had not received the formal acceptance of tender and requested the Director of Supplies (Textiles) either to withdraw the order or to enhance the rate to Rs. 1,450 each as the prices of raw material had shot up.

1.8. The Ministry of Law advised the Ministry of Supply on 10th March 1971 that 'D' was justified in repudiating the contract on account of delay in issuing the confirmatory acceptance of tender and that, in the circumstances, there was no possibility of enforcing the contract against the firm. The acceptance of tender placed on 'D' was accordingly cancelled on 6th May 1971 without financial repercussions. Earlier on 25th March 1971, the same firm had offered to supply 400 outer flies of tents at the rate of Rs. 1,297.50 each and the balance 1,660 flies of tents at the rate of Rs. 1,435 each. Orders were placed on 'D' at those rates in April 1971 for 400 outer flies of tents and for 1,660 more in June 1971.

1.9. Cost of 2,060 outer flies of tents (Rs. 29.01 lakhs) at those rates was Rs. 11.07 lakhs more than the cost at the rate of Rs. 871 allowed to 'A'. Had the formal acceptance of tender been issued in time to firm 'D' against its offer of August 1970, the cost would have been less by Rs. 2.28 lakhs.

1.10. Except 33 outer flies tents, 'D' completed the supply by February 1973.

1.11. Thirtythree outer flies of tents were repurchased in August 1973 from 'E' at an extra expenditure of Rs. 3,102. A demand notice for Rs. 3,552 recoverable as general damages was sent to 'D' on 11th December 1973. The amount has not yet been recovered (November 1975).

1.12. Apart from the increase in cost in this case, supply of the outer flies of tents was delayed by about 7 years. The Ministry stated (November 1975) that "full quantity was not being supplied by the firms and orders for balance quantity were being placed on other firms who also did not complete the supplies and this process had to be continued for sometime to make purchases effected."

[Paragraph 38 of the Report of the Comptroller & Auditor General of India for the year 1974-75. Union Government (Civil)]

Placement of Order

1.13. It is seen from the Audit Paragraph that an order for 3,000 outer flies of tents worth Rs. 26.13 lakhs was placed on M/s. N. K. Textiles Mills, Delhi (Firm 'A') for delivery within 2-1/2 months i.e., by 31 March 1966, to Ordnance Depot, Mathura, although according to the assessment made by the Inspector of General Stores the firm was capable of producing outer flies worth Rs. 5 to 7 lakhs per month. It is also understood that the Ministry of Defence had informed Audit in January 1976 that the capacity verification of the firm was made only on an *ad hoc* basis and on a limited scale as a comprehensive verification was not possible within a short period. The Committee desired to know whether the Ministry of Defence had brought these facts to the notice of D. G. S. & D. The Department of Supply replied in negative.

1.14. To a question as to why the Directorate General of Supplies and Disposals had not satisfied themselves that the capacity of the firm was correctly assessed before placing the large order for Rs. 26 lakhs, the Department of Supply have replied:

"The supply was actually required to be completed by December 1965 but there was some delay in finalising the proposals. While taking the purchase decision in December 1965, the

DGS&D had no reason to disregard the assessment made by the Defence Inspectorate that M/s. N. K. Textiles Mills had a capacity of Rs. 5 to 7 lakhs per month. Keeping in view the urgency of the demand and the price offered, the decision to place the order worth about Rs. 26 lakhs was taken. The observation recorded on the file much later, in November, 1966 was as a result of the visit of a Junior Field Officer to the firm's premises for ascertaining the progress of supplies. The J. F. O. gave his own opinion that the firm's capacity would not be more than 15 to 20 Nos. daily."

1.15. In the same context the Department elucidated the position further as under :

"The Defence Inspectorate had assessed the capacity of the firm at Rs. 5 to 7 lakhs per month and initially the proposal was to place orders for 2325 Nos., which would have been roughly about 3 months capacity. However, the final decision to place orders for 3,000 Nos. was taken in view of the cheapness of this firm's quotation as compared to the next higher quotations. It may be pointed out that the Advance A/T on M/S. N. K. Textiles was placed on 30-12-65, although the formal contract was issued only 17-1-1966. As the delivery was required by 31-3-1966, the actual time available from the advance intimation was about 3 months. The value of about Rs. 26 lakhs was not very much in excess of 3 months capacity of the firm as assessed by the Defence Inspectorate."

1.16. The Committee then desired to know whether at the relevant time when this order was placed on the firm, it held any other orders for supply of outer flies and whether the delivery schedules stipulated in those cases were kept in view while placing the Accepted Tender in the present case. The Department of Supply have stated :

"At the relevant time when this order was placed on firm 'A' (M/s. N. K. Textiles Mills) it held order (s) for Rs. 310,599 for tentage items. It is not known whether the same was for outer fly or not. However this load was taken into account while placing order on firm 'A'."

1.17. The Check Points for consideration of Tenders have been given in Appendix VI of the DGS&D Manual. The Check Points *inter alia* provide :

"(A) (ii) Examination of the tenders in depth covering all aspects including existing load on the past suppliers, delivery offered, performance, technical competence etc.

(C) (ii) Ensure that capacity reports are not called for haphazardly and in piecemeal and earlier capacity reports should be made full use of which are valid for a period of one year. Again capacity reports are to be called for only on firms, who come within the zone of consideration.....”.

1.18. A statement showing the details of the firms which had quoted in response to the tender enquiry, the rates offered, other terms and conditions and the results of the verification of their production capacity of outer flies etc. is at Appendix I.

1.19. As stated in the Audit para the supply of outer flies was to be completed by the 31 March, 1966. In June 1966, the delivery period was extended upto 30 September, 1966. The firm, however, offered only 900 outer flies of tents for inspection till 30 September, 1966. In November 1966, the Director General, Supplies and Disposals observed that the firm had capacity to produce only about 500 outer flies of tents per month and that the period of two and half months originally allowed to it for supplying 3,000 outer flies of tents was unrealistic. The delivery period was further extended (December 1966) initially upto January 1967 and then again February 1967) upto March 1967.

1.20. The Department of Supply have given the following reasons for granting repeated extensions to the firm despite its failure to supply the stores within the stipulated periods :

“In terms of A/T, the delivery period was 31-3-66. Within delivery period firm had offered 500 Nos. for inspection and asked for delivery period extension giving reasons that the material used for manufacture of the item, particularly Turpentine Oil and other chemicals were not available in the market. The firm was keeping the Department informed with the developments by endorsing copies of their correspondence with the suppliers of the materials and also Ministry of Petroleum & Chemicals. They also forwarded to the DGS&D the copies of responses received from suppliers of oil to substantiate their point regarding non-availability on account of which firm was asking for delivery period extension at that time. This was the primary reason for granting them the repeated D.P. extensions upto 31-3-67 after consulting the indenter. Upto this period, firm had supplied 900 Nos. only.”

1.21. A standby risk purchase tender enquiry was also issued in February 1967 for purchase of outer flies of tents not supplied by M/s. N. K. Textiles Mills, Delhi. The lower offer of Rs. 1,129 per outer fly of tents

against this enquiry was from firm 'B' (M/s. Atma Ram Suri and Sons, Delhi) for supply of tents valuing Rs. 2 lakhs per month on an average, including supplies against pending orders, commencing after 60 days from the date of receipt of confirmation order. Expectation of the Director General, Supplies and Disposals was that supply would be completed by M/s. Atma Ram Suri & Sons, Delhi, by May/June 1968. The second lowest offer of Rs. 1130 each was from M/s. N. K. Textiles Mills, Delhi. Although by March 1967 only 25 more outer flies of tents were supplied by M/s. N. K. Textiles Mills, Delhi instead of making risk purchase of the remaining tents further extension of delivery period upto 31 December 1967 was allowed to this firm as it represented on 30 March 1967 that not only the prices of raw materials and dyes had increased but also these were not readily available even at the high prices. Fifteen more outer flies of tents were supplied by this firm by December 1967. Thereafter, no further supply was made by it although the period of delivery was extended (November 1967) upto 30th June 1968. Order for the remaining 2,060 outer flies of tents was cancelled in October 1968 at the risk and cost of M/s. N. K. Textiles Mills, Delhi.

1.22. In this connection Para 180(i) of the DGS&D Manual states as follows :

"The buyer's right to effect repurchase at the risk and cost of the seller arises only upon the breach of the contract by the seller. Hence the Purchase Offer should invite risk purchase tender only after the breach of the contract has occurred. In exceptional circumstances, however, where stores are most urgently required by the indenter's and are not available from ready stock but have to be manufactured and some public harm would be caused by delay in supplies, standby tenders may be invited prior to the date of breach with a view to minimise the inconvenience that may be caused to the Government by the delay in performance of the contract. Issue of such standby tenders should, however, be restricted to cases of purchase of special class or kind of stores which are not readily available in the market and whose price is more or less stable over comparatively long periods of time. In other words standby tenders which are opened not longer than a month before the date of breach can be accepted. On the other hand, in case of stores whose price is liable to fluctuate from day to day, it will not be advisable to accept standby tenders opened a long time before the date of breach. If at all it is found necessary in the public interest to accept a standby tender in such cases, such a tender should be the one opened only a few days before the date of breach. In any

case it should be born in mind that the cancellation of the contract on th defaulting supplier should precede the accep-
tance of the standby tender.”

1.23. The Committee desired to know the reasons for not accepting the lower offer of Rs. 1129/- of M/s. Atma Ram Suri & Sons, Delhi against the risk purchase tender enquiry of February 1967 after cancellation of contract with M/s. N. K. Textile, Mills, Delhi in a note, the Department have furnished the following explanation :

“Against Risk Purchase standby tender enquiry of February 1967, firm ‘B’ (M/s. Atma Ram Suri & Sons, Delhi) quoted a lower rate of Rs. 1129/- as against Rs. 1130/- quoted by firm ‘A’. Firm ‘B’ quoted the delivery period as ‘Tent of the value of Rs. 2 lakhs per month on an average including all pending orders in hand. Delivery to start after 60 days on receipt of confirmation.’ On the basis of the rate quoted by the firm ‘B’, the value of 2100 Nos. worked out to Rs. 23.7 lakhs approximately i.e. a delivery of 14 months. Since firm ‘A’ at this stage asked for delivery extension of 12 months only and at the old contract rate (i.e. @ Rs. 871/-) as compared to delivery of 14 months of firm ‘B’ at a higher rate, preference was given to firm ‘A’ for the reason that the purpose of getting store earlier was not being served by accepting the rate of firm ‘B’ and for this reason, their offer was not considered.”

1.24. As one of the reasons for granting extensions was stated to be the non-availability of raw materials and dyes even at higher prices, the Committee enquired whether this plea of the firm had been examined in detail by the DGS&D before agreeing to the extensions on this ground. The Department of Supply have stated as follows :—

“Plea of the firm regarding non-availability/shortage of the raw material and dyes even at the higher price, were not examined in detail but the same was clear from the copies of the various correspondences the firm had with the supplies of raw material and Ministry of Petroleum & Chemicals.”

1.25. In the meantime a standby limited tender enquiry was issued on 22 July 1968 for effecting risk purchase. The lowest quotation of Rs. 870 each against this tender enquiry was from ‘C’ (M/s. Bijli Cotton Mills, Hathras) a sister concern of ‘A’ (M/s. N. K. Textiles Mills Ltd. Delhi). The second lowest quotation was from firm ‘A’ at the rate of Rs. 871 each.

1.26. Asked to state the reasons for floating only a limited tender enquiry instead of an open tender enquiry the Department in a note have stated :

“Limited Tender Enquiry was issued to all registered and likely suppliers for tent with a view to save time, particularly when the Department was in the knowledge of all the likely suppliers (34 registered and 10 unregistered) who could supply the store.”

1.27. It has been prescribed in Para 180(ii) of the DGS&D Manual that “if it is considered to place risk purchase contracts on the basis of standby tenders for special reasons, approval of the Department of Supply should be obtained since placement of order on the basis of standby tender would prejudice the right of the Government to recover extra expenditure incurred in risk purchase.”

1.28. The Committee desired to know as to what prompted the DGS&D to issue the ‘standby’ enquiry in July, 1968 itself when the existing contract with M/s. N. K. Textiles Mills, Delhi was actually cancelled at his risk and cost only in October, 1968. The Department of Supply in a note furnished to the Committee have stated :

“The last extended D.P. was upto 30-6-68 and accordingly decision was taken in July 1968 to issue a standby tender enquiry with a view to make a valid risk purchase within six months of the date of breach (last agreed D/P). The contract was, however, cancelled after seeing the response of the tender enquiry. To issue standby tender enquiry before actual cancellation of the contract is a normal practice adopted by Department whenever time is short, to ensure a valid risk purchase within 6 months of the last agreed D.P.”

1.29. To another question as to whether the DGS&D was aware that M/s. Bijli Cotton Mills, Hathras was only a sister concern of M/s. N. K. Textiles Mills, Delhi and if so, how the Directorate satisfied themselves that the former would be able to supply the ‘outer flies’ at the rate of Rs. 870/- when the latter had not been in a position to supply them at the rate of Rs. 871/- and had persistently defaulted, the Department of Supply have stated :

“Against standby tender enquiry opened on 30-8-68, the lowest offer of Rs. 870/- per number for delivery of tents 100 Nos. per month commencing 2 months after receipt of order was received from firm ‘C’ (M/s. Bijli Cotton Mills, Hathras). The defaulting firm ‘A’, however quoted the same rate of Rs. 871/-. Although firm ‘A’ and firm ‘C’ were sister concerns but both

the firms are separately registered with DGS&D and have separate capacity to manufacture the item as can be seen from the capacity report furnished by I.G.S. in October 1965 (Appendix II). Firm 'C' presumably quoted the lower rate of Rs. 870 with a view to save the risk purchase loss of their sister concern. As the firm 'C' was separately registered with DGS&D the offer being lowest, the same was accepted."

1.30 When the Committee desired to know whether any verification was carried out in regard to the capacity of M/s. Bijli Cotton Mills, Hathras to supply the goods, the Department have replied :

"As the firm was registered with DGS&D for tent and equipments for civil and military equipment, no further verification of their capacity was carried out before acceptance of their tender. Their capacity as per Appendix II was known."

1.31. Enquired on whose recommendation this firm was included in the enquiry and whether it had supplied similar goods earlier, the Department of Supply have informed the Committee :

"As the firm 'C' was registered with DGS&D for supply of tent and equipments, as per decision taken to issue limited tender enquiry to all registered and likely suppliers for tents, the enquiry was issued to them also.

The firm 'C' had supplied similar goods earlier and completed the supplies under 16 contracts valued Rs. 159.20 lakhs approximately during the period 1961 to 1968."

1.32. Though orders had been initially placed on M/s. N. K. Textiles Mills, Delhi at the rate of Rs. 871, it had represented in March, 1967 that the prices of raw materials and dyes had increased. On the other hand the lowest offer received from M/s. Atma Ram Suri & Sons, Delhi in response to the risk purchase tender enquiry floated in February, 1967 was as high as Rs. 1129 and the second lowest offer of Rs. 1130 was from M/s. N. K. Textiles Mills, Delhi. In such circumstances the much lower rate of Rs. 870 quoted by firm M/s. Bijli Cotton Mills, Hathras appeared odd. The Committee therefore further enquired whether this aspect and the likelihood of M/s. N. K. Textiles Mills (Firm A) trying to pre-empt the efforts of the DGS&D examined while accepting the offer of M/s. Bijli Cotton Mills (Firm C).

In a note the Department of Supply have explained the position thus :

"Firm 'C' presumably quoted the lower rate of Rs. 870 with a view to save the risk purchase loss of their sister concern.

As the firm 'C' was separately registered with DGS&D, the offer being lowest, the same was accepted."

"The aspect and likelihood of firm 'A' trying to pre-empt the efforts of the DGS&D, was not examined while accepting the offer of firm 'C'. The offer of firm 'C' was accepted for the reason that they were the lowest registered tender having capacity to produce and their offer could not be ignored legally for making a valid risk purchase."

1.33. It has been pointed out by Audit that no supply was made by M/s. Bijli Cotton Mills. As however the acceptance of tender was not in conformity with the tender of this firm about arbitration, quantum of liquidated damages etc. no action could be taken against it and the acceptance of tender was cancelled in June, 1970 without financial repercussion on either side.

1.34. The Committee desired to know as to why it had not been possible to issue the Acceptance Tender in this case so as to be in conformity with the tender of the firm and whether any responsibility had been fixed for the lapse. The Department have stated that "there appears to have been an error in this case and responsibility is being fixed."

1.35. According to the DGS&D Manual risk purchase is to be on identical terms as in the original contract. Para 180(b) of the Manual reads as under :—

"Risk purchase contract should be on the same terms (apart from the delivery date) as the original contract i.e., the goods should be of the same specification and liable to inspection by the same authority and the terms of payment, provision regarding liquidated damages, arbitration etc. should be the same. Where the original A/T provides for submission of a sample by the firm for testing prior to bulk supply a similar condition should also be incorporated in the risk purchase contract. The intention is that the terms of the new contract should not be more onerous or more liberal than those of the original contract except to the extent of the time of supply i.e., much shorter time for supply of the stores would be permissible under the law, provided of course a reasonable time is given. If in exceptional circumstances it is necessary to depart from this rule alternative quotations should be invited, one according to the terms of the original contract and the other according to revised requirements, the damages claimable being circulated on the basis of the legal advice obtained in each case.

It may also be added that even if the first purchase has been effected by negotiation or as a result of limited tender enquiry, the risk purchase contract should as far as practicable be effected by advertised tender."

1.36. According to the Audit Paragraph, a sum of Rs. 11,842 was decided to be recovered from M/s. N. K. Textiles Mills, Delhi as pre-estimated damages for delay in supplies. Out of this, Rs. 7,850 were waived (October 1969) as there were delays in inspection. The Committee enquired as to how the amount of pre-estimated damages was determined. The Department of Supply have stated :

"In terms of the A/T, the purchaser was entitled to recover the liquidated damages @ 1 per cent of the price of any store which the contractor fails to deliver, for each month or part of the month of delay, subject to the maximum of 3 per cent. That would mean that the purchaser could recover the maximum 3 per cent of the value of delayed supplies i.e. for 3 months delay irrespective of delay being more than 3 months. In the present case out of 940 Nos. supplied by them, they had offered for inspection 500 Nos. within the original D/P of 31-3-66 and the balance 440 Nos. were delayed for more than 3 months. As such in accordance with 3 per cent ceiling, the L/D works out as under :—

Cost of 440 Nos. @ Rs. 871	Rs. 3,83,240.00
S.T. @ 3%	Rs. 11,497.00
	<hr/>
Total	Rs. 3,94,737.00
3% liquidated damages	Rs. 11,842.11

Initially the D/P was regularised by claiming the L.D. of Rs. 11,842 which was subsequently reduced to Rs. 3,992 after waiving an amount of Rs. 7,850 towards the time taken in inspection. The amount of Rs. 3,992 ultimately claimed as L/D has been arrived at after eliminating the delay in inspection."

1.37. On the basis of tenders received in August 1970 against a limited tender enquiry (July 1970) an order was placed on M/s. Sha Devchand Parmal, Jodhpur by telegram on 18 November, 1970 for supply of 2,060 outer flies of tents at Rs. 1,297.50 each. The formal acceptance of tender was issued on 13 January, 1971. On 15 January, 1971, the firm intimated by telegram that it had not received the formal acceptance of tender and requested the Director of Supplies (Textiles) either to withdraw the order or to enhance the rate to Rs. 1,450 each as the prices of raw material had shot up.

1.38. In this connection Para 123 of the DGS&D Manual, *inter alia* states :

“The contract is brought into existence upon communication of the acceptance which must be within the time prescribed. Where the post is the medium of communication between the parties, the acceptance is complete as soon as it is posted. Proper care should be taken to address the letter or telegram of acceptance correctly.

When a specific stipulation has been made by a tender that he should be informed of the acceptance by a particular date and in a particular manner, it must be ensured that the acceptance is issued in time and in the manner prescribed by the tenderer to enable him to receive it by the date fixed. If despatch of the intimation is delayed and tenderers receive it after the expiry of the specified date, the contract will not be a valid one and it will be open to the tenderer to refuse to accept the same. All Purchase Officers should, therefore, ensure that in all such cases, the decision is communicated sufficiently in advance so that the tenderer will definitely receive it before the due date.

After a decision has been taken in regard to the Acceptance of a Tender, the formal ‘Acceptance of Tender’ should normally issue within 48 hours of the decision. Under certain circumstances, it may be necessary to issue advance of Acceptance of Tender by telegram or letter, but this should be restricted to the minimum.

The formal Acceptance of Tender must issue as quickly as possible but in no case later than 5 days after the issue of Advance Acceptance.”

1.39. Enquired as to why there was a long delay in issuing the confirmatory A/T to this firm, the Department have stated :

“Advance A/T was placed by telegram on 18-11-70 from Headquarters, but the issue of the formal contract was delayed because the file was held up at Headquarters and was not available to the Regional Office, from where this had to issue, till the middle of January 1971. The question of responsibility for this delay has already been examined and it was found that the case records were detained at Headquarters for further attention and that no fault could be ascribable to any specific person for this time lag.”

1.40. The Ministry of Law had advised the Ministry of Supply on 10 March, 1971 that this firm was justified in repudiating the contract on

account of delay in issuing the confirmatory acceptance of tender and that in the circumstances, there was no possibility of enforcing the contract against the firm.

1.41. In this connection a copy of the Ministry of Law's opinion dated 10 March 1971 is reproduced at Appendix III. It will be seen that the Ministry of Law had *inter alia* stated :

- “As for the question whether the advance telegraphic acceptance of tender dated 18-11-1970 followed by a post confirmatory copy of the same to the firm concluded the contract, it may be stated that it can be fairly contended that the said advance telegraphic acceptance of tender concluded the contract. With a view to avoid all controversy in the matter, we may, in future, mention in the advance telegraphic acceptance itself that the tender is being accepted for and on behalf of the President of India. Necessary instructions may be issued in this direction.
2. Since the contract had been concluded with the issue of the advance acceptance telegram, there was no occasion for the firm to take any objection with regard to the execution of the contract. A concluded contract having come into effect with the issue of the advance acceptance telegram on 18-11-1970, there was nothing wrong in the firm writing on 19-12-1970 that in the absence of a formal A/T it was not possible for them to offer stores which were lying ready with them for inspection in their factory.
 3. Upto 19-12-1970 when the firm wrote the said letter there would appear to be little doubt that a validity concluded contract was in existence.
 4. In this particular case, it was obvious that it was not possible for the firm to supply any stores without the same having been passed in inspection and inspection could not take place without the confirmatory A/T having been issued and copy thereof sent to the Inspector for necessary guidance. In this particular case the firm waited for one full month after the issue of the advance acceptance telegram before addressing the DGS&D on 19-12-1970. Unfortunately even after the receipt of the letter of the firm dated 19-12-1970 no action was taken to issue the confirmatory A/T for about 25 days.
 5. It would not appear to be possible to convince the Arbitrator or a Court of Law that the time of about two months taken in the issuance of the confirmatory A/T was a reasonable time. Having

thus failed to fulfil its contractual obligations and having prevented the firm from taking steps to commence the supplies, it would not be possible for the DGS&D to take resort to the stipulation that the delivery was to commence 15 days after the receipt of formal A/T at the rate of Rs. 5 lakhs worth of goods per month.

6. It also appears to be difficult in the circumstances of the case to contend that the formal A/T was put in the course of transmission to the firm on the 13 January, 1971, i.e. before the firm expressed their intention to repudiate the contract by telegram dated 15 January 1971.
7. Considering all the facts and circumstances of the case, there would appear to be no reasonable chance of successfully enforcing the contract against the firm. That being the position, question of legally enforcing the delivery of goods worth Rs. 5 lakhs at the contracted rates does not arise."

1.42 The A/T placed on this firm was accordingly cancelled on 6 May, 1971 without financial repercussions. Earlier on 25 March 1971 the same firm had offered to supply 400 outer flies of tents at the rate of Rs. 1,297.50 each and the balance 1,660 flies of tents at the rate of Rs. 1,435 each. Orders were placed on this firm at those rates in April 1971 for 400 outer flies of tents and for 1,660 more in June 1971.

1.43. Cost of 2060 outer flies of tents (Rs. 29.01 lakhs) at those rates was Rs. 11.07 lakhs more than the cost at the rate of Rs. 871 allowed to M/s. N. K. Textiles Mills, Delhi. Had the formal acceptance of tender been issued in time to M/s. Sha Devichand Panmal, Jodhpur against its offer of August 1970, the cost would have been less by Rs. 2.28 lakhs.

1.44. Except 33 outer flies of tents M/s. Sha Devichand Panmal, Jodhpur completed the supply by February 1973. Thirty-three outer flies of tents were repurchased in August 1973 from firm 'E' M/s. Mansukh Co. (Overseas) Faridabad at an extra expenditure of Rs. 3,102. A demand notice for Rs. 3,552 recoverable as general damages was sent to the former firm on 11 December 1973. The amount has not yet been recovered (November 1975).

1.45 The Department of Supply had stated (November 1975) to Audit that, "the deduction of Rs. 3,552 could not be made as the firm have not submitted their 5 per cent balance bills and a note has been kept in the recovery register of Pay and Accounts Officer. However the case for recovery is being processed further".

1.46. Apart from the increase in cost in this case, supply of the outer flies of tents was delayed by about 7 years. The Department stated (Novem-

ber 1975) to Audit that "full quantity was not being supplied by the firm and orders for balance quantity were being placed on other firms who also did not complete the supplies and this process had to be continued for some time to make purchases effected."

1.47. The present position in regard to the recovery of general damages, as intimated* by the Department of Supply on 31 December, 1976 is as follows :—

"As the firm 'D' (M/s. Sha Devichand Panmal, Jodhpur) have now agreed to refer the issue relating to recovery of general damages to Arbitration, the Arbitrator has already been appointed by the DGS&D on 5-7-76. Firm has filed the statement of claim on 25-9-76. Statement of claim on behalf of U.O.I. is being filed".

1.48. Against an order of 3000 outer flies of tents placed on M/s. N. K. Textiles Mills, Delhi in January, 1966 only 940 outer flies of tents were supplied by 15 December, 1967 (500 Nos. within the delivery period, 400 Nos. by 30 September, 1966, another 25 Nos. by March 1967 and 15 by December 1967 respectively). Thereafter, no further supply was made by it although the period of delivery was extended from time to time upto 30 June 1968. The balance quantity of 2060 Nos. was however cancelled in October 1968 at the risk and cost of the firm. On 30 October, 1968 order for 2060 outer flies of tents was placed on M/s. Bijli Cotton Mills, Hathras, a sister concern of M/s. N. K. Textiles Mills, Delhi at Rs. 870/- each. As, however, the Acceptance of Tender was not in conformity with the tender of M/s. Bijli Cotton Mills, Hathras about arbitration, quantum of liquidated damages etc., the Acceptance of Tender was cancelled in June 1970 without financial repercussion.

1.49 Subsequently, out of these 2060 tents, M/s. Sha Devichand Panmal, Jodhpur supplied 400 Nos. at Rs. 1297.50 each and another 1627 at Rs. 1435/-each by February, 1973 and the balance 33 Nos. were supplied by M/s. Mansukh Co. (Overseas), Faridabad in August 1973. The procurement of 2060 outer flies piecemeal at different points of time from different suppliers resulted in a payment of Rs. 11.07 lakhs more than what it would have cost at the rate of Rs. 871/-originally allowed to firm M/s. N. K. Textiles Mills, Delhi. There was also an unconscionable delay of 7 years in the supply of the outer flies of tents which otherwise were required to be supplied within 2-1/2 months after placing of the order on 17 January, 1966. The way in which this matter has been dealt within the DGS&D, indicates that there is something basically wrong in the system of indenting, selection

* Not vetted in Audit.

of suppliers and the acceptance of tenders by the DGS&D which is entrusted with the responsibility of ensuring that urgent Government orders are executed in time without subjecting the Government to any loss due to slippages etc. on the part of suppliers. Some of the conspicuous shortcomings which reflect adversely on the working of the DGS&D, are discussed in the following paragraphs.

1.50. The Committee note with surprise that although it was known to the DGS&D that the firm had the capacity to produce outer flies to the extent of Rs. 5 to 7 lakhs per month, they deliberately decided to enhance the initially proposed order of 2325 Nos. to 3000 Nos. without correspondingly increasing the period of delivery beyond 31 March 1966, as initially fixed. That the assessment of the capacity of M/s. N. K. Textiles Mills, Delhi was not correctly made by the Defence Inspectorate is borne out by the subsequent performance of the firm. Despite grant of several extensions the firm could complete only 31 per cent (940 out of 3000 Nos.) of its contractual commitment and that too by December 1967. In fact, the DGS&D himself had observed in November 1966 that the firm had a capacity to produce only about 500 outer flies of tents per month and that the period of 2-1/2 months originally allowed to it for supplying 3000 outer flies of tents was unrealistic. The Committee would like to know the various considerations and factors which weighed with the Defence Inspectorate in assessing the capacity of the firm to supply outer flies worth Rs. 5 to 7 lakhs per month.

1.51. The Committee are further perturbed to learn that as admitted by the Ministry of Defence in January 1976, the capacity verification of the firms was done on an ad hoc basis and on a limited scale as a comprehensive capacity verification of these firms as per normal practice was not possible within the short period. In this connection, the Committee would like to point out that according to the relevant provisions in Appendix VI of the DGS&D Manual, all aspects including existing load on the past suppliers, delivery offered, performance, technical competence, etc. are required to be examined in depth while considering the tenders. It is also required to be ensured that capacity reports are not called for haphazardly and in piecemeal and earlier capacity reports which are valid for a period of one year, are made full use of. It is evident from the facts that the placing of the order was rushed through without observing in entirety the specific provisions in the DGS&D Manual. The Committee would like the Ministry to investigate the reasons as to why DGS&D had not taken care to satisfy itself about the firm's production capacity, existing load, technical competence etc. before placing an order on them. As this firm was said to be on the approved list of the DGS&D and was supplying various tentage items, the Ministry should also inquire whether the

firm's earlier capacity reports were gone into before placing this huge order on them.

1.52. Para 123 of the DGS&D Manual provides that "the formal Acceptance of Tender must issue as quickly as possible but in no case later than 5 days after the issue of Advance Acceptance." The Committee note that after issuing the advance Acceptance of Tender to M/s. N. K. Textiles Mills, Delhi on 30 December, 1965, the formal Acceptance Tender was issued after a lapse of 19 days, i.e. on 17 January, 1966. Similarly, an advance Acceptance Tender was placed on M/s. Sha Devichand Panmal, Jodhpur by telegram on 18 November, 1970. The firm waited for full one month after the issue of advance acceptance telegram before it wrote to DGS&D on 19 December, 1970 that in the absence of a formal Acceptance of Tender, it was not possible for them to offer stores. The Committee are unable to comprehend why even after receipt of this letter, no action was taken to issue the confirmatory Acceptance of Tender till 13 January, 1971. It is surprising that the DGS&D did not ensure the delivery of Acceptance of Tender to the firm which is stated to have telegraphically informed the DGS&D on 15 January, 1971 about the non-receipt of the Acceptance of Tender and asked for withdrawal of the order. The Ministry of Law, to whom the matter was referred, had also opined that "it would not appear to be possible to convince the Arbitrator or a Court of Law that the time of about two months taken in the issuance of the confirmatory Acceptance of Tender was a reasonable time. Having thus failed to fulfil its contractual obligations and having prevented the firm from taking steps to commence supplies, it would not be possible for DGS&D to take resort to the stipulation that the delivery was to commence 15 days after the receipt of formal Acceptance of Tender. . . . Considering all the facts and circumstances of the case, there would appear to be no reasonable chance of successfully enforcing the contract against the firm." The disquieting feature of this avoidable delay of about 2 months in the issuance of the confirmatory order was that this firm got a gratuitous benefit of extra payment of Rs. 2.28 lakhs against its offer of August 1970. The Committee consider this to be a fit case for a thorough probe with a view to fix responsibility. Government should also ensure that there was no collusion of officers with the firm which conferred on it extra financial benefits. Conclusive action may be taken to obviate recurrence of such costly lapses and the Committee informed.

1.53. The Committee are further surprised to note that standby risk purchase tender enquiry was issued by the DGS&D in February 1967 when the extended delivery period granted to M/s. N. K. Textiles Mills, Delhi was yet to expire on 31 March, 1967. According to Para 180(i)

of the DGS&D Manual 'the buyer's right to effect repurchase at the risk and cost of the seller arises only upon the breach of the contract by the seller. Hence the purchase officer should invite risk purchase tender only after the breach of the contract has occurred. In exceptional circumstances, however, where stores are most urgently required by the indentors and are not available from ready stock but have to be manufactured and some public harm would be caused by the delay in supplies, standby tenders may be invited prior to the date of breach with a view to minimise the inconvenience that may be caused to the Government by the delay in performance of the contract.' The Committee would like to know the reasons for departure in this case. If standby tender enquiry is issued in exceptional circumstances as envisaged above, the Committee would like Government to investigate as to why the risk purchase was not effected and instead further extension was granted to this firm beyond 31 March, 1967 to 31 December, 1967 etc. even when it was clear from the firm's poor performance that it was incapable of meeting in time the contractual obligations. Had the DGS&D shown prudence expected of him, they would have saved an infructuous expenditure of Rs. 5,31,480 being the amount recoverable from this firm on account of the difference in risk purchase offer and original price allowed to it for the balance quantity of 2060 outer flies apart from an earlier delivery of stores at least by three years.

1.54. Again, a standby limited tender enquiry was issued on 22 July, 1968 for effecting risk purchase. Para 180(ii) of the DGS&D Manual prescribes that "if it is considered to place risk purchase contracts on the basis of standby tenders for special reasons, approval of the Department of Supply should be obtained since placement of order on the basis of standby tender would prejudice the right of the Government to recover extra expenditure incurred in risk purchase". The Committee have not been informed whether the approval of the Department of Supply was obtained before floating standby tender enquiries in the above two cases. The Committee would therefore seek a specific clarification of this aspect.

1.55. The Committee note that as a result of the standby limited enquiry an order for supply of 2060 outer flies was placed on M/s. Bijli Cotton Mills, Hathras a sister firm of M/s. N. K. Textiles Mills, Delhi—on 30 October, 1968 but no supply was made by it. Since the acceptance of tender placed on the firm was not in conformity with its tender about arbitration, quantum of liquidated damages etc., no action could be taken against it and the acceptance of tender was cancelled after an expiry of 20 months in June, 1970 without financial repercussion on either side.

1.56. It has been laid down in Para 180(b) of the DGS&D Manual that "risk purchase contract should be on the same terms (apart from the delivery date) as the original contract i.e. the goods should be of the same specification and liable to inspection by the same authority and the terms

of payment, provision regarding liquidated damages, arbitration, etc. should be the same." The Department of Supply have also conceded that "there appears to have been an error in this case and responsibility is being fixed." The Committee would like to be apprised of the action taken in the matter.

1.57. Yet another deplorable feature of the case is that the recovery of pre-estimated damages for delay in supplies to the tune of Rs. 7,850 had to be waived as there were delays in inspection of the stores. It would be recalled that Para 409 of the DGS&D Manual stipulated that "inspection should commence within one week of supplier's request irrespective of the value of the stores offered for inspection and location of supplies and should be completed as early as possible." The Committee stress that the reasons for delay in inspection of the stores may be investigated with a view to fix responsibility and to take remedial measures for future.

1.58. The Committee are constrained to learn that the aspect and likelihood of M/s. N. K. Textile Mills, Delhi trying to pre-empt the efforts of DGS&D was not examined while accepting the offer of M/s. Bijli Cotton Mills, Hathras a sister concern of the former firm at Rs. 870/- per outer fly in August 1968. The Committee would like to know the reasons as to how this important aspect was lost sight of, particularly in view of the fact that the orders had been placed earlier on M/s. N. K. Textiles Mills, Delhi at the rate of Rs. 871/- per outer fly and the lowest offer received earlier in response to the risk purchase tender enquiry in February, 1967 were as high as Rs. 1129/- from M/s. Atma Ram Suri & Sons, Delhi and Rs. 1130/ from M/s. N. K. Textiles Mills, Delhi. It is rather intriguing that M/s. N. K. Textiles Mills, Delhi on whom the order was initially placed for the supply of outer flies had in the contract undertaken to make supplies F.O.R. Hathras. The firm's sister concern, viz., M/s. Bijli Cotton Mills, Hathras was also located at Hathras. The Committee strongly suspect that after this firm had failed in their contractual obligations, their own associate, viz. M/s. Bijli Cotton Mills, Hathras came forward through another door to supply the outer flies of tents. Government should enquire whether any action could be taken to stop the practice whereby when one firm fails in the contractual obligations another associate of the same firm comes through another door with a view to bale out the parent firm and also extract a much higher price.

1.59. The Committee are concerned to note that the supply of 3000 outer flies was to be completed by 31 March, 1966 whereas M/s. N. K. Textiles Mills, Delhi had supplied only 500 Nos. by that date. The delivery period had been extended in June 1966 upto 30 September, 1966, then in December 1966 upto January 1967 and again in February 1967 upto March 1967, but the firm had offered only 400 Nos. more upto September

1966 and another 25 Nos. thereafter. According to the Department of Supply these extensions were granted on account of non-availability of material used for manufacture of the item, particularly turpentine oil and other chemicals. What has surprised the Committee is the fact that this plea of the firm was not examined by the Department in detail so as to check its veracity. It is inexplicable that extensions were granted rather liberally even after the expiry of the contractual period notwithstanding the poor performance of this firm ab initio. The Acceptance of Tender should have been cancelled at firm's risk and cost in time. The failure to take timely action needs to be investigated.

1.60. The Committee are unable to understand as to why DGS&D had placed orders on M/s. Sha Devichand Panmal, Jodhpur in April, 1971 at the rate of Rs. 1297.50 each for 400 outer flies and at Rs. 1435/- each for 1660 more in June 1971 on the basis of the firm's earlier offer of 25 March, 1971 when the Acceptance of Tender placed on it on that very basis earlier was cancelled in May 1971 itself. They would also like to know whether any separate tender was floated for purchasing 1660 outer flies of tents at the rate of Rs. 1435/- each and if not, the reasons therefor.

1.61. The Committee note that a demand for recovery of Rs. 3,552/- recoverable as general damages was sent to this firm on 11 December, 1973 and the amount has still not been recovered. According to the information given to the Committee on 31 December, 1976, the case has been referred to Arbitration. The Committee would like to be informed in due course the decisions of Arbitration in this regard.

1.62. Outer flies of tents constitute an important item for Defence purposes. From the transactions relating to the purchase of tents, the Committee gather the impression that capacity within the country is not fully geared to meet urgent Defence requirements. Government may take note of the present deficiencies in this regard and take suitable remedial measures and inform the Committee of the concrete action taken in this behalf.

CHAPTER II

PURCHASE OF ASSEMBLY SPRINGS

Audit Paragraph

2.1. On 28th July 1969, the Director General, Supplies and Disposal placed an order on 'A' for supply of 2,000 front assembly springs at the rate of Rs. 40 each and 3,000 rear assembly springs at the rate of Rs. 60 each for supply to the Commandant, Central Ordnance Depot, Delhi Cantt. Before commencing bulk production samples were to be submitted to the Inspector of Vehicles, Delhi within sixty days from the placement of the order i.e., by 26th September 1969. Supplies were to commence within one month from the date of approval of the samples and were to be completed in four months.

2.2. 'A' failed to submit the samples within the specified time. The order for rear assembly springs was, however, increased from 3,000 to 3,600 on 9th October 1969. Certain deviations in specifications sought for by 'A' on 17th November 1969 were agreed to by the Inspector of Vehicles, Delhi, on 28th November 1969. Extension was also granted on 26th December 1969 for submission of samples by 25th January 1970. The samples submitted on 7th January 1970 were approved on 5th March 1970. According to the delivery period re-fixed on 31st March 1970 the supplies were to commence on 5th April 1970 or earlier and were to be completed by 5th July 1970 or earlier.

2.3. On 4th August 1970 'A' applied for 3 months extension of delivery period. On 26th September 1970, extension was granted upto 31st December 1970. The firm offered 800 front assembly springs for inspection on 26th December 1970. These were accepted by the Inspector of Vehicles, Delhi, on 31st December 1970.

2.4. As no further supplies were made, representative of the Directorate General of Supplies and Disposals contacted 'A' several times between February 1971 and May 1972. One of them had reported in September 1971 that the firm was not interested in making the supply. Other reports indicated that the firm intended to apply for extension of time. Some of the reports also indicated that the firm also intended to apply for increase in price.

2.5. Eventually, twenty months after expiry of delivery period, the firm offered on 24th October 1972 to commence delivery five months later from April 1973 and complete supply of the outstanding quantity in one year by March 1974. This was agreed to by the Director General, Supplies and Disposals, on 6th December 1972. The Director General, Supplies and Disposals, was aware of the heavy increase in the price of assembly springs as the rates quoted against another tender in October 1972 were 79 to 94 per cent higher than the rates allowed to 'A' in July 1969.

2.6. 'A' did not commence supply in April 1973. No reply was sent by it to a communication from Director General, Supplies and Disposals sent on 30th July 1973. Officers sent for inspection on 22nd September 1973, 16th November 1973 and 18th January 1974 reported that the firm was not interested in making the supplies due to heavy increases in the price of raw materials. After consulting the Law Ministry, the contract was cancelled on 15th May 1974, at the risk and cost of 'A' indicating 31st March 1974 as the date of breach.

2.7. For making the risk purchase a limited tender enquiry was issued on 17th June 1974 for 1,200 front assembly springs and 3,600 rear assembly springs. Tenders were opened on 12th July 1974. Of the four offers received, the lowest offer of 'B' was not recommended by the inspecting authority and was rejected. The second lowest offer of 'C' was rejected as it was subject to price variation clause. The third lowest offer of 'D' was rejected as the deviations from specifications proposed by it were not acceptable. The next higher offer was from 'E' which quoted Rs. 170 for a front assembly spring and Rs. 235 for a rear assembly spring. The indenter was informed, on 18th July 1974, of the rates received, and was asked to confirm, within ten days, provision of additional funds at the increased rates; the indenter was not, however, told that risk purchase had to be effected by 30th September 1974.

2.8. On 6th August 1974, 'E' proposed deviations from specifications. Before providing additional funds, the indenter reduced the requirements of rear assembly springs from 3,600 to 2,600 and withdrew demand for front assembly springs, on 5th September 1974, and enquired from the Director General, Supplies and Disposals, whether any recovery would be possible from 'A'. The indenter was informed on 12th September 1974 by the Director General, Supplies and Disposals, that valid risk purchase was not possible, because the acceptable offer from 'E' was subject to deviations and only general damages would be recoverable from 'A'.

2.9. In spite of several reminders from the Director General, Supplies and Disposals, Army Headquarters intimated provision of additional funds on 31st October 1974, one month after expiry of the last date for valid risk

purchase. The Inspector of Vehicles, Jabalpur, intimated on 1st November 1974 that the deviations sought by 'E' had been allowed in the past. An acceptance of tender was placed on that firm for 2,600 rear assembly springs at the rate of Rs. 235 each on 22nd November, 1974. The rear assembly springs (2,600) purchased from 'E' cost Rs. 4.55 lakhs more as compared to the price of 'A', Liquidated damages cannot be recovered from 'A' as the risk purchase was not effected within the validity period, i.e. by 30th September 1974. On 13th August 1975, the Director General, Supplies and Disposals issued circulars to all likely suppliers/approved sources in order to ascertain market rate on or around the date of breach for assessing general damages recoverable from 'A'. Government stated (September 1975) that necessary action for assessment and recovery of general damages would be taken on receipt of replies from those to whom references were made for ascertaining market rate.

[Paragraph 39 of the Report of the Comptroller and Auditor General of India for the year 1974-75 (Civil)]

2.10. According to Audit Paragraph an order on 'A' [M/s. Auto Pins (India), Regd., Kashmere Gate, Delhi] for supply of 2,000 front assembly springs at the rate of Rs. 40 each and 3,000 rear assembly springs at the rate of Rs. 60 each for supply to Central Ordnance Depot, Delhi Cantonment was placed on 28th July 1969. Before commencing bulk production, samples were to be submitted to the Inspector of Vehicles, Delhi within sixty days from the placement of the order i.e., by 26th September, 1969. Supplies were to commence within one month from the date of approval of the samples and were to be completed in four months. However, certain deviations in specifications sought for by the firm on 17th November 1969 were agreed to by the Inspector of Vehicles, Delhi on 28th November 1969. Extension was also granted on 26th December 1969 for submission of samples by 25th January 1970. The samples submitted on 7th January 1970 were approved on 5th March 1970.

2.11. The Committee desired to know the action taken by Government when the firm failed to submit the samples by the specified date viz. 26th September 1969. The Department of Supply have stated* as follows :—

“Pilot sample was to be submitted to the Inspector. The DGS&D came to know only in October, 1969/November 1969 that (1) in his letter dated 29-9-69 the Inspector of Vehicles, Jabalpur had issued instructions to the Inspector of Vehicles, Delhi about Inspection of Pilot Samples ; and

* Not vetted in Audit

- (2) The Inspector of Vehicles (Def.) intimated in his endorsement dated 27-10-1969 that the firm immediately on receipt of the A/T had asked for deviation in specification. Inspector's letter referred to firm's letter dated 15-8-1969. The Inspector rejected the request."

2.12. About the reasons for allowing a further extension (upto 25th January 1970) to the firm for the submission of sample, the Department of Supply have replied* :

"Inspector's letter rejecting the firm's request for deviation was dated the 27th October 1969, i.e. after the date prescribed for giving sample. This had the effect of keeping the contract alive. Besides on 27-11-1969 the Inspector enquired from DGS&D whether Pilot Sample which firm reported to be ready could be inspected. Considering these facts it was decided to give one opportunity to the firm to tender sample upto 26th January, 1970."

2.13. According to the delivery period refixed on 31st March, 1970 the supplies were to commence on 5th April, 1970 or earlier and were to be completed by 5th July 1970 or earlier. The Committee enquired whether the delivery period was refixed with right to recover liquidated damages. The Department of Supply have informed* the Committee as under :

"Contractually the Delivery Period was four months from the date of approval of pilot sample. The sample was approved in Inspector's letter dated 5-3-1970. The Delivery Period was accordingly fixed as 5-7-70. Question of levy of Liquidated Damages does not arise in such a case."

2.14. On 4th August 1970 this firm applied for 3 months extension of delivery period (nearly a month after the revised delivery period had exposed). On 26th September, 1970 extension was granted up to 31st December, 1970. Asked to clarify if the delivery period was reckoned from the date of expiry of the revised delivery period, i.e. 5th July, 1970, the Department of Supply have stated* :

"The Inspector approved the samples in his letter dated 5-3-1970. As per Clause 10 of the A/T, the contractor was to commence supplies within one month from the date of approval of Pilot Sample and complete supplies in 4 months thereof, i.e. the delivery period became 5th July, 1970. In his letter dated 29-7-1970 the Inspector informed the DGS&D that the material test report of spring leaves drawn at the time of shot peening had since been received from Inspector of Metals, Muradnagar and the same did not conform to EN-45A as required. As delivery period

* Not vetted in Audit

has expired on 5-7-70 this was not intimated to the firm. Meanwhile the firm in their letter dated 4-8-70 stated that the manufacturing of the items in question is in progress and they would be grateful if the delivery date was extended by another three months from the date of receipt on the letter. On a reference from the DGS&D the Indentor in his letter dated 2-9-1970 received on 16-9-1970 stated that stores are still required and delivery date may be extended. The Indentor also expressed urgency for the stores. The extension was granted on 26-9-1970 for 3 months as requested by the firm with reservation of rights for liquidated damages and with denial clauses. Normally the extension is given for the period asked for, from the date of issue of extension letter.

2.15. In this context it may be relevant to mention that according to the DGS&D Manual :—

“Extension of date of delivery amounts to changing the terms of the original contract and such an extension can be only with the consent of the parties i.e., the purchaser and the seller. Extension granted without any application on the part of the contractor has no effect in law and does not bind the contractor. While granting extension of time on an application from the contractor the letter and the spirit of the application should be kept in view in fixing the time for delivery.

In such cases where there is delay in the issue of amendment letter granting extension, the delivery date to be stipulated in the extension letter should be fixed in such a way as to give the supplier the effective time required by him for the performance of the contract.

It may be noted that extensions in delivery period should be issued within 7 days of receipt of requests for such extensions unless they require a reference to the indentor or other authorities and in the latter case they should be issued within 7 days of receipt of reply from the indentor or the other authority concerned.”

2.16. In a note furnished to the Committee the reasons for granting extension upto 31st December, 1970 have been given* thus :

“The extension was asked for by the firm for three months. Some time was spent in consultation with the Indentor and the extension letter could be issued only on 26-9-70. It was therefore reasona-

* Not vetted in Audit

ble to give extension for three months. The extension was therefore granted upto 31-12-70. It was issued with right to recover liquidated damages.”

2.17. The Audit Paragraph states that the firm offered 800 front assembly springs for inspection on 26th December 1970. These were accepted by the Inspector of Vehicles, Delhi, on 31st December 1970. As no further supplies were made, representatives of the Directorate General of Supplies and Disposals contacted the firm 18 times between February 1971 and May 1972. One of them had reported* in September 1971 that the firm was not interested in making the supply. Other reports indicated that the firm intended to apply for extension of time. Some of the reports also indicated that the firm also intended to apply for increase in price. Asked to state the reasons for the DGS&D taking the initiative almost repeatedly in this case when it was the responsibility of the firm to adhere to the contractual obligations or face the consequences of default, the Department of Supply, in a note, furnished* to the Committee have stated* :—

“The firm had supplied 800 Nos. by 31-12-70 when the Delivery Period expired. The Progress Officer who visited the firm on 31-12-70 had reported that the firm was proposing to ask for extension for three months. No request for extension was received from the firm unlike in four other cases where they had applied for extension. The indenter also intimated the need for the stores. However, instead of cancelling the contract the firm was being contacted through Progress Wing to apply for extension.”

2.18. Texts of the Reports* submitted from time to time, by the representatives of the DGS&D in this regard are reproduced at Appendix IV. Some extracts from the Reports are given below :—

12-2-1971

“No further progress has been made by the firm. The delay in supplies is reported to be due to non-availability of raw material. Further, Shri of the firm has stated that now they have made arrangement for the raw material and intend to write for 3 months extension in Delivery Period in a day or so.

3-9-1971

The firm have again stated that they intend to write for extension in Delivery Period within a week's time. However, the firm

* Not vetted in Audit

have not given any definite reasons for not applying for extension in Delivery Period so far. Further, it may be pointed out that during the discussions with Shri it transpired that they do not seem to be much interested in the execution of the order.

8-3-1972

The various visits to the firm by JFO has not yet produced any result. DP(D) may like to call for the firm's representative to discuss the contracts that they are holding. Firm is located at Delhi.

I have spoken to Shri of M/s. Auto Pins regarding supplies of A/Ts placed on the firm outstanding. He has informed me that he is leaving for Singapore and will be back by 16th/17th March. He will meet me in my office on 18/19th March, then discussion will be held for supply.

10-4-72

DP(D) spoken to Shri regarding extension of delivery date.

1-5-72

The firm was lastly visited on 1-5-72 and contacted Shri dealing with DGS&D cases. The firm stated that the prices of raw material for the stores against subject A/T have very much increased and as such it is un-economical for them to execute the subject A/T. Further it was understood from Shri..... that they intend to approach 'P' for increase in the prices and also for extension in D/P within a week's time."

2.19. Eventually, twenty months after expiry of delivery period the firm offered on 24 October, 1972 to commence delivery five months later from April, 1973 and complete supply of the outstanding quantity in one year by March 1974. This was agreed to by the Director General. Supplies and Disposals, on 6 December, 1972. Audit has pointed out that the Director General, Supplies and Disposals, was aware of the heavy increase in the price of assembly springs as the rates quoted against another tender in October 1972 were 79 to 94 per cent higher than the rates allowed to this firm in July 1969.

2.20. It will be seen that instead of cancelling the contract immediately at the risk and cost of the firm when it had failed to supply the stores in

spite of several reminders, the DGS&D granted extension of delivery period. Giving the reasons for this further extension upto 31 March, 1974, the Department have stated* :—

“Only two extensions, one on 26-9-70 and another on 6-12-72 were issued. In the first case as already explained earlier this extension was granted on the request of the firm with reservation of rights for Liquidated Damages and denial clauses. In the case of the second extension the firm in their letter dated 24-10-72 stated that the stores would be supplied from April 1973 and completed in March 1974. In view of the increase in price meanwhile it was considered advisable to grant the extension.”

In this regard the provisions in Para 177 of Chapter V of the DGS&D Manual read as under :—

“If the contractor fails to deliver the stores or any instalment thereof with the period fixed for such delivery or at any time repudiates the contract before the expiry of such period the Government is entitled to cancel the contract and to repurchase the stores not delivered at the risk and cost of the defaulting contractor. In the event of such a risk purchase, the defaulting contractor shall be liable for any loss which the Government may sustain on that account provided the purchase, or if there is an agreement to purchase, such agreement is made, in case of default to deliver the stores by the stipulated Delivery Period, within six months from the date of such default and in case of repudiation of the contract before the expiry of the aforesaid delivery, within six months from the date of cancellation of the contract.”

Again Para 178 of DGS&D Manual states that :—

“It is the responsibility of the Purchase Officers to ensure that risk purchase is effected within the time limit as specified above. Any loss that may occur on account of delay on the part of the Purchase Officer to effect risk purchase within the specified time limit will render him liable to disciplinary action as also for recovery of the loss so sustained on account of his negligence/default. Even though six month's time is provided, every endeavour should be made to effect repurchase within the shortest possible time without waiting for

* Not vetted in Audit

the completion of the six months period. This will save a lot of legal complications.”

2.21. According to Para 179 of the DGS&D Manual the Purchase Officer should keep a careful watch on the date of delivery, keep himself fully informed as to what supplies have been made, what supplies are likely to be made by the date of delivery and what in general are the prospects of the contractor performing the contract“Where he considers it more expedient and is satisfied that performance is not likely to be forthcoming at all, he should cancel the entire contract or the quantity outstanding as on the date of expiry of the delivery period.

2.22. In view of the fact that the rates quoted against another tender in October 1972 were 79 to 94 per cent higher than the rates accepted by this firm in July 1969, the Committee enquired whether it was not fairly clear at the time of granting extension in December 1972 that the firm was perhaps trying to avoid supplies on account of the subsequent increase in the price of assembly springs. To this, the Department of Supply have replied* :—

“When the firm had in writing asked for extension and promised to make supplies it was considered prudent to give the extension and keep the contract binding on the firm, especially when the initial possibility of cancellation of contract had not been availed of.”

2.23. According to Audit Paragraph the firm did not commence supply in April 1973. No reply was sent by it to a communication from the Director General Supplies and Disposals sent on 30 July 1973. Officers sent for inspection on 22 September, 1973, 16 November 1973 and 18 January 1974 reported that the firm was not interested in making the supplies due to heavy increases in the price of raw materials. After consulting the Law Ministry, the contract was cancelled on 15 May 1974 at the risk and cost of it indicating 31 March 1974 as the date of breach.

2.24. It has been stated by the Department of Supply to Audit in September 1975 that 5 more cases were outstanding against the firm who had asked for extension in 4 cases.

Asked about the present position about these cases, the Committee have been informed* that the firm had completed the supplies in three cases. In the remaining two cases as the firm could not complete supplies even after extensions, the contracts were cancelled at firms' risk and cost.

* Not vetted in Audit

These stores were either not required by the Indentor or were purchased at lower rate.

2.25. For making the risk purchase a limited tender enquiry was issued on 17 June 1974 for 1,200 front assembly springs and 3,600 rear assembly springs. Tenders were opened on 12 July 1974. Of the four offers received, the lowest offer of M/s. Racmann Springs Pvt. Ltd., N. Delhi was not recommended by the inspecting authority and was rejected. The second lowest offer of M/s. Murarka Engineering Works, New Delhi was rejected as it was subject to price variation clause. The third lowest offer of M/s. Metropolitan Springs Pvt., N. Delhi was rejected as the deviations from specifications proposed by it were not acceptable. The next higher offer was from M/s. Jamna Auto Industries, Yamuna Nagar which quoted Rs. 170 for a front assembly spring and Rs. 235 for a rear assembly spring. The indentor was informed, on 18 July, 1974, of the rates received, and was asked to confirm, within ten days, provision of additional funds at the increased rates; the indentor was not, however, told that risk purchase had to be effected by 30 September, 1974.

2.26. Asked to indicate the grounds on which the offers of M/s. Racmann Springs Pvt. Ltd., New Delhi & M/s. Murarka Engineering Works, New Delhi who had quoted lowest and second lowest respectively were rejected, the Department have stated* :—

“Against the risk purchase tender enquiry the lowest offer from firm was not recommended by the Inspection Authority as the firm was inspected by the Inspector in January 1974 and as a result of this inspection, did not consider capable for manufacturing the stores in question. It may be added that apart from adverse capacity report, the firm had quoted unacceptable terms, such as, price variation clause, which they did not withdraw despite DGS&D asking them to do so.

The second lowest offer from firm was also not acceptable due to price variation clause. They had also given unacceptable conditions regarding payment terms etc. which they did not agree to withdraw.”

2.27. It is seen that the third lowest offer of M/s. Metropolitan Springs Pvt. Ltd., New Delhi was rejected as the deviations from specifications proposed by it were not acceptable. The Committee desired to know the details of the deviations as proposed by it and whether these deviations

*Not vetted in Audit

were the same as had been agreed to earlier in 1969 in the case of M/s. Auto Pins (India) Regd., Delhi. The Department of Supply have informed as under :—

“The deviations proposed by firm are given below :—

1. The second leaf is having a slot of 12×8.5 mm. The firm shall drill the hole of 8.5 mm. diameter instead.
2. Tapering of end of 3rd and 4th leaves should be waived. The actual lengths of the leaf will be 768 mm and 434 mm as per the drawings. This may make the spring little stiffer with the result that the spring constant may be slightly more than 3.83 kg per mm.

The centre bolt (Part No. 54042—44000) will be made from BSS-970, EN8 Steel.

3. Spring Assembly will be supplied without bushes.

2.28. When the Committee enquired of the reasons for not informing the indenter, while requesting him on 18 July, 1974 to confirm provision of additional funds, that the risk purchase had to be effected by 30 September, 1974, the Ministry have replied* :—

“When a reference was made to the indenter on 18-7-74 to provide additional funds, there was no reasons to point out that the last date for risk purchase was 30-9-1974, which was a date beyond 2 months from the date of reference. As per Office Order No. 102 dated 1-5-74, even for an ordinary indent of Defence a period of 6 weeks is to be allowed to the indenter to enable him to provide funds. As against this, the indenter had a period of more than 2 months to make available the requisite funds. The indenter was fully aware even before opening of the tenders at the time of confirming particulars given in the risk purchase tender enquiry *vide* his letter dated 28-6-74 that tenderers had been asked to keep their offer valid upto 12-9-74. As such, it was not considered necessary to tell the indenter that risk purchase was to be effected by 30-9-74. The question relating to provision of additional funds had been constantly chased by DGS&D *vide* letters dated 1-8-74, 27-8-74, telegram dated 4-9-74 and 13-9-74. The indenter was clearly told on 27-8-74 that the funds must be conveyed latest by 2-9-74 so that the risk purchase could be effected in time. Again on 4-9-74, he was

* Not vetted in Audit

clearly told that this was a risk purchase case and offers were valid till 12-9-74."

2.29. On 6th August, 1974, M/s. Jamna Auto Industries, Yamunaganar proposed deviations from specifications. Details of these deviations as stated to have been furnished by it to the Department are as under :

"We confirm that stores quoted by us will strictly conform to the particulars/specifications and drawings as required as per tender enquiry mentioned above, but we shall require deviations in the Tower rolling of Leaf Nos. 3 and 4 of Front Spring Assembly and Leaf Nos. 3, 4 and 5 of the Rear Spring Assembly. The said deviations have already been granted to us by the Inspector of Vehicles, Inspectorate of Vehicle, (North Zone), Red Fort, Delhi, against DGS&D A/T No. SV-4/101/74/294/21-7-71/PAOD/857 dated 14-1-1972."

2.30. Enquired whether the deviations sought by this firm were the same as had been agreed to in the case of M/s. Auto Pins (India) Regd., Delhi earlier, the Department of Supply have stated* :

"Since no amendment to the contract allowing any deviations was issued to Firm 'A' and no supplies of Rear Springs had been effected by them with such deviations, strictly speaking it cannot be said that any deviations were finally allowed by the Purchaser to Firm 'A' against their cancelled A/T. However, the details of deviations which were applied for by Firm 'A' in November, 1969 and considered acceptable to the Inspectorate were as under :—

Original	Deviations
(1) Thickness of leaves : 7.5 MM	Thickness of Leaves : 8MM
(2) End of the Leaves Nos. 3rd, 4th and 5th Taper Rolled.	Ends of the leaves Nos. 3rd 4th and 5th without taper rolling but with end grinding on tension side.
(3) Material Sup-6	Material EN-45A."

In reply to a question, the Department have stated :

"Valid risk purchase was not possible due to deviations asked for by the firm 'E' against the specifications stipulated in the cancelled A/T."

* Not vetted in Audit

2.31. The Committee asked whether the aspect that deviations allowed from the specifications would render difficult the enforcement of the risk purchase clause on M/s. Auto Pins (India) Regd., Delhi kept in view while agreeing to the deviations sought by M/s. Jamna Auto Industries, Yamunanagar. The Department of Supply in a note have stated* :—

“The aspect that deviations allowed from specifications would render difficult the enforcement of the risk purchase clause on firm ‘A’, was kept in view while agreeing to the deviations sought for by firm ‘E’. There was no other alternative also as none of the four offers received could be considered acceptable for the purpose of valid risk purchase due to deviations in terms and conditions and/or specifications from the cancelled contract.”

2.32. It has been stated that before providing additional funds at the increased rates, the indenter reduced the requirements of rear assembly springs from 3,600 to 2,600 and withdrew demand for front assembly springs, on 5 September, 1974 and enquired from the Director General, Supplies and Disposals, whether any recovery would be possible from M/s. Auto Pins (India) Regd., Delhi. The indenter was informed on 12 September, 1974 by the Director General, Supplies and Disposals that valid risk purchase was not possible because the acceptable offer from M/s. Jamna Auto Industries, Yamunanagar was subject to deviations and only general damages would be recoverable from the former firm.

2.33. To a question whether the Ministry of Law had been consulted in this regard before a decision was communicated to the indenter on 12 September, 1974, the Department of Supply have stated :

“Ministry of Law were not consulted.”

2.34. Audit has pointed out that inspite of several reminders from the Director General, Supplies and Disposals, Army Headquarters intimated provision of additional funds on 31 October, 1974, one month after expiry of the last date for valid risk purchase. The Inspector of Vehicles, Jabalpur, intimated on 1 November, 1974 that the deviations sought by M/s. Jamna Auto Industries, Yamunanagar had been allowed in the past. An acceptance of Tender was placed on that firm for 2600 rear assembly springs at the rate of Rs. 235 each on 22 November, 1974. The rear assembly springs (2600) purchased from it cost Rs. 4.55 lakhs more compared to the price of M/s. Auto Pins (India) Regd., Delhi.

*Not vetted in Audit

Clarifying the position in this regard the Ministry of Defence informed the Audit in January, 1976 that "... in the absence of an intimation from DGS&D to COD regarding the date of effecting risk purchase, as also for the reason that it took quite some time to carry out the provisional review as on 1st August, 1974 and then obtain financial concurrence to the proposal for reduction in the Depot's requirement of assembly springs and procurement of stores at the enhanced rates, the confirmation asked for by the DGS&D from COD Delhi Cantt. regarding the provision of additional funds at the enhanced rates could not be sent to them within the 10 days period stipulated by the DGS&D. Instead this confirmation could be sent to DGS&D at the earliest only on 31 October, 1974. On the other hand, if the DGS&D had informed the indentor about the firm date by which confirmation should be received for effecting risk purchase, things could have been expedited with operational urgency."

2.35. It has been further pointed out by Audit that Liquidated damages could not be recovered from M/s. Auto Pins (India) Regd., Delhi as the risk purchase was not effected within the validity period, i.e., by 30 September, 1974. On 13 August 1975, the Director General, Supplies and Disposal issued circulars to all likely suppliers/approved sources in order to ascertain market rate on or around the date of breach for assessing general damages recoverable from it.* Government stated (September, 1975) that necessary action for assessment and recovery of general damages would be taken on receipt of replies from those to whom references were made for ascertaining market rate.

2.36. The Committee desired to know whether the general damages recoverable have since been assessed and if so what is the present position in regard to recovery of the amount. The Department of Supply have stated :*

"As none of the offers was available for valid risk purchase, only general damages could be claimed from the defaulting firm. The general damages recoverable have been assessed as Rs. 2,23,712 for which demand notice was issued to the defaulter on 3-1-1976. Upon failure of the defaulter to deposit the amount and their request to refer the dispute to Arbitration under Clause-24 of the Conditions of Contract contained in DGS&D-68(REVISED), Arbitrator has been appointed on 2-6-1976. Pending decision of the Arbitrator, recovery of the amount is held up."

* Not vetted in Audit

2.37. From the facts disclosed in the Audit para and the material made available to them the Committee have come to the inescapable conclusion that Government by their own inaction and lack of proper control over the performance of a contracting firm have had to incur a substantial loss of Rs. 4.55 lakhs apart from the inconvenience caused to an indenting Defence Department due to the inexcusable delay of about 5 years in obtaining the goods indented for. The transaction relating to the purchase of assembly springs reveals gross violation of existing rules and gives rise to suspicions regarding undue favour shown to the supplier. The facts emerging from the case are discussed in the following paragraphs.

2.38. According to the Audit paragraph, the DGS&D had placed an order on firm M/s. Auto Pins (India) Regd., Delhi on 28 July, 1969 for the supply of 2000 front assembly springs at the rate of Rs. 40 each and 3000 rear assembly springs (subsequently increased to 3600 on 9 October 1969) at the rate of Rs. 60 each for supply to the Commandant, C.O.D., Delhi Cantonment. According to the terms and conditions of the Accepted Tender, before commencement of bulk production, samples were to be submitted to the Inspector of Vehicles, Delhi within 60 days from the date of placement of A/T., i.e., by 26 September, 1969. The Committee regret to find that though the firm had requested on 15 August 1969 for certain deviations in specifications, the request for deviations was rejected by the Inspector of Vehicles, Delhi after a lapse of 2-1/2 months, on 27 October, 1969. This had the effect of keeping the contract alive beyond 26 September, 1969. What has further surprised the Committee is the fact that the deviations in specifications sought for again by the firm on 17 November, 1969 were agreed to by the Inspector of Vehicles, Delhi on 28 November, 1969, who surprisingly enough, also enquired from DGS&D whether pilot samples could be inspected. In this connection, it would be relevant to mention that Para 424 of the DGS&D Manual lays down that "Inspecting Officers have no authority to pass stores not exactly in accordance with the terms of the order. When firms are unable to supply stores in accordance with the samples or specifications, the matter should be referred to the Supply Officer who will, if necessary, refer to the Indenting authority, before deciding that the substitutes offered by the suppliers may be accepted".

2.39. This being the position, the Committee are unable to understand the over-zealous generosity of the Inspector in entertaining firm's request for deviations in specifications without referring the matter to DGS&D or seeking their concurrence to it. In fact, the Department of Supply have informed the Committee that the DGS&D came to know of it only in October/November 1969.

2.40. It is patently clear that staggering of inspection of the pilot samples beyond the stipulated period resulted in refixation of delivery period giving

little or no time to the Government to claim for liquidated damages. The considerations that weighed with the Inspector to agree to the deviations, which had been rejected by him earlier are not clear. The Committee would therefore like the Government to probe into the matter thoroughly.

2.41. The Committee are further unhappy that it took the authorities about 2 months to approve the samples as they find that these were received on 7 January 1970 and approved on 5 March 1970. Again, although according to the revised delivery period the supplies were to be completed by 5 July 1970, the firm sought on 4 August 1970, an extension of delivery period for a further period of 3 months from the date of receipt of their letter. What has distressed the Committee more is the fact that instead of taking decision as per the provisions in the DGS&D Manual, within 7 days of the receipt of the request or within 7 days of the receipt of reply from the Indentor, if a reference was made to them, the extension was granted on 26 September 1970 for a period of 3 months upto 31 December 1970. The extension was granted in spite of the fact that the Inspector had informed the DGS&D on 29 July 1970 that the material test report of spring leaves received from Inspector of Metals, Muradnagar had indicated that the spring leaves did not conform to S.N. 45A as required. The Committee are unable to appreciate the reasons which compelled the Government first to entertain the request for extension after the expiry of originally stipulated delivery period and then to grant them liberal extension upto 31 December 1970, which if counted from the date of expiry of delivery period on 5 July 1970 comes to about 6 months. The Committee have been informed that upto 31 December 1970, the firm offered a paltry 800 front assembly springs for inspection on 26 December 1970, against the order for 2000 springs.

2.42. Yet another disquieting feature of the case is that since the firm made no supplies after the expiry of the delivery period on 31 December 1970, the representatives of DGS&D contacted the firm, albeit without success, as many as 18 times between February 1971 and May 1972. The frequent visits of the DGS&D representatives to firm's premises give rise to serious suspicions. The reports sent by the DGS&D staff were conflicting and could hardly be relied upon. While some reports of the DGS&D staff indicated that the firm was not interested in making the supplies, others indicated that the firm intended to apply for extension.. Some of the reports also indicated that the firm also intended to ask for increase in price. The Department of Supply have informed the Committee that instead of cancelling the contract the firm was being contacted through Progress Wing to apply for extension as the stores were needed by the Indentor. The Committee find it hard to appreciate this unusual course adopted by DGS&D in repeatedly contacting the firm for seeking extension when, according to the rules it was

bound either to adhere to the contractual obligations or face the consequences of default. The Committee would like to know the level at which the reports submitted by the representatives of the DGS&D were disposed of in that office and whether the prescribed procedure was followed in this regard.

2.43. The Committee are surprised to note that even though there were no prospects of resuming the supply, DGS&D agreed on 6 December 1972 to the firm's offer submitted on 24 October 1972, *i.e.*, 24 months after the expiry of delivery period, for commencement of delivery five months later, *i.e.* from April 1973 and completion of supply of the outstanding quantity in one year by March 1974. This was agreed to despite the fact that the DGS&D were aware of the heavy increase in the price of assembly springs as the rates quoted against another tender in October 1972 were 79 to 94 per cent higher than the rates allowed to the firm in July 1969. It is regrettable that DGS&D acted in violation of the provisions of para 179 of DGS&D Manual which lays down that 'the purchase officer should keep a careful watch on the date of delivery, keep himself fully informed as to what supplies have been made, what supplies are likely to be made by the date of delivery and what in general are the prospects of the contractor performing the contract where delivery is specified in instalments, he should wherever he is satisfied that performance is not likely to be forthcoming, cancel the instalments in default and call upon the contractor to execute the remaining part of the contract. In other cases (*i.e.* contracts stipulating delivery in one lot) where he considers it more expedient and is satisfied that performance is not likely to be forthcoming at all, he should cancel the entire contract or the quantity outstanding as on the date of delivery period. All devious and dubious tactics adopted by the DGS&D give rise to a grave suspicion that there was some sort of collusion between the DGS&D staff and the firm with a view to enabling the latter to pocket gratuitous pecuniary benefits. The Committee would therefore reiterate that a high level enquiry should be conducted in the case with a view to fixing responsibility.

2.44. In this connection, the Committee would like to point out that Para 177 of Chapter V of the DGS&D Manual provides that "if the contractor fails to deliver the stores or any instalment thereof within the period fixed for such delivery or at any time repudiates the contract before the expiry of such period, the Government is entitled to cancel the contract and to repurchase the stores not delivered at the risk and cost of the defaulting contractor. In the event of such a risk purchase, the defaulting contractor shall be liable for any loss which the Government may sustain on that account provided the purchase, or if there is an agreement to purchase, such agreement is made in case of default to deliver the stores by the stipulated Delivery Period, within six months from the date of such default and in case of repudiation of the contract before the expiry of the aforesaid delivery, within six months from the date of cancellation of the contract".

From the information furnished to the Committee, it is quite clear that DGS&D had deviated from the prescribed procedure in extending the delivery period on the terms dictated by M/s. Anto Pins (India) Regd., Delhi. Due to this initial lapse it appears DGS&D became helpless thereafter as there was no other alternative left with them except to keep the contract binding on the firm since the A/T was not cancelled within the stipulated delivery period and it was not possible to effect risk purchase which could be made within six months from the date of cancellation of the contract. The apprehensions of the Committee are further strengthened from the reply given by the Department of Supply that "when the firm had in writing asked for extension and promised to make supplies, it was considered prudent to give the extension and keep the contract binding on the firm, especially when the initial possibility of cancellation of contract had not been availed of." Since the firm did not honour their commitment for supplies even after the extended schedule, the contract was cancelled on 15 May 1974, after consulting the Ministry of Law, at the risk and cost of the firm indicating the date of Breach as 31 March 1974.

2.45. The Committee note that for making the risk purchase, a limited enquiry was issued on 17 June 1974 for 1200 front assembly springs and 3600 rear assembly springs. Of the four offers received, the offers of M/s. Racmann Springs Pvt. Ltd., M/s. Murarka Engineering Works and M/s. Metropolitan Springs Pvt. Ltd., New Delhi were rejected. The next offer was from M/s. Jamna Auto Industries, Yamunanagar which quoted Rs. 170 for a front assembly spring and Rs. 235 for a rear assembly spring. The Committee are deeply concerned to note that while requesting the indenter on 18 July 1974 for confirmation of additional funds at the rates quoted by M/s. Jamna Auto Industries, Yamunanagar, the DGS&D failed to inform the Indenter of the vital fact that the risk purchase in the case of M/s. Anto Pins (India) Regd., Delhi was to be effected by 30 September 1974. The intimation regarding provision of additional funds was sent by the Army Headquarters on 31 October 1974 *i.e.*, one month after the expiry of the last date for valid risk purchase. The Ministry of Defence have stated that "if the DGS&D had informed the indenter about the firm date by which confirmation should be received for effecting risk purchase, things could have been expedited with operational urgency." On the other hand, the Department of Supply have informed the Committee that "as per Office Order No. 102 dated 1-2-1974, even for ordinary indent of Defence a period of 6 weeks is to be allowed to the indenter to enable him to provide funds. As against this, the indenter had a period of more than 2 months to make available the requisite funds. The question relating to provision of additional funds had been constantly chased by DGS&D *vide* letters dated 1-8-1974, 27-8-1974, telegram dated 4-9-1974 and 13-9-1974. The

indentor was clearly told on 27-8-1974 that the funds must be conveyed latest by 2-9-1974 so that the risk purchase could be effected in time. Again on 4-9-1974, he was clearly told that this was a risk purchase case and offers were valid till 12-9-1974". From the explanations offered it becomes abundantly clear that there were lapses galore on the part of both the sides. To obviate recurrences of such costly mistakes, the Committee would stress the need for setting up a suitable coordinating machinery. The Committee would like to be informed about the decisions taken in the matter.

2.46. The Committee find that the indentor was informed on 12 September 1974 by the DGS&D that valid risk purchase was not possible because the acceptance offer from M/s. Jamna Auto Industries, Yamunanagar was subject to deviations and only general damages would be recoverable from M/s. Auto Pins (India) Regd., Delhi. What has disturbed the Committee is the fact that the DGS&D failed to consult the Ministry of Law before arriving at this decision.

2.47 The Committee also note that before providing additional funds, the indentor reduced the requirement of rear assembly springs from 3600 to 2600 and withdrew demand for front assembly springs. The Department of Supply state that against 5 more contracts outstanding against M/s. Auto Pins (India) Regd., Delhi (September 1975) the firm had completed supplies in three cases, whereas the remaining two contracts were cancelled at firm's risk and cost as they had failed to complete the supplies even after giving extensions. The outstanding stores were either not required by the indentor or were purchased at lower rates. It has been laid down in Para 190 of the DGS&D Manual that "in cases where no repurchase is made after cancellation of the contract either due to withdrawal or reduction in demand by the Indentor, Government can recover only the general damages." The Committee would like to be informed whether the general damages were also recovered from this firm in the above two cases in which no repurchase was made.

2.48. The Committee find that the general damages recoverable from M/s. Auto Pins (India) Regd., Delhi have been assessed as Rs. 2,83,712 for which demand notice was issued to the defaulting firm on 3 January 1976. Upon its failure to deposit the amount and its request to refer the dispute for arbitration, Arbitrator has been appointed on 2 June 1976. The Committee would like to know the latest position of the recovery.

CHAPTER III

PURCHASE OF ANGOLA SHIRTING

Audit Paragraph

3.1. On 27th July 1966 an order was placed on firm 'A' for supply of 1,36,750 metres of drab Angola shirting of 76 centimetres width—at Rs. 5.28 per metre—to Defence department against its indent of 23rd March 1966. 'A' did not make any supply, as the increase in price demanded by it in June 1967, consequent on the high price it had to pay for imported wool tops and also increase in excise duty, was not allowed.

3.2. The contract was cancelled in June 1969 at the risk and cost of the firm. The contract provided that supply would commence after one month from the date of receipt of imported wool tops by 'A' and would be completed in 3½ months thereafter. The date of allocation of imported wool tops to 'A' by the Textile Commissioner was known to the Director General, Supplies and Disposals, but he did not know the date it had received the wool tops. As such the exact date of breach could not be determined by the Ministry of Law and risk purchase was not possible.

3.3. Department's claim of Rs. 3.18 lakhs as general damages was referred to an arbitrator in September 1970. The arbitrator gave an award of Rs. 3,100 only in favour of the department in February 1975.

3.4. After the contract with 'A' was cancelled in June 1969, an order for 50,000 metres of Angola shirting of 152 centimetres width (1 lakh metres in terms of 76 centimetres width) was placed on 'B' in February 1970 at Rs. 14.90 per metre. Another order for supply of 18,375 metres of 152 centimetres width (36,750 metres in terms of 76 centimetres width) was placed on 'C' in March 1970 at the rate of Rs. 14.85 per metre. 'C' completed the supply by December 1971.

3.5. Upto January 1972, 33,218 metres of Angola shirting of 152 centimetres width supplied by 'B' were accepted with price reduction between 2 per cent and 10 per cent, as these did not conform to specifications. In August 1972 'B' informed the Director General, Supplies and Disposals, that it had 18,000 metres more, which however, were not acceptable to the inspector of Defence department because sub-

standard dyes had been used in that shirting. 'B' also stated that it had applied for licence for importing standard dyes, and as licence was not granted it had to use whatever sub-standard dye was available.

3.6. In November 1972 extension of delivery period was allowed to 'B' up to December 1972. 'B' neither applied for further extension of delivery period nor made any more supply. On being approached by the Director General, Supplies and Disposals, in February 1973 to state whether the contract could be cancelled at the risk and cost of 'B' the Ministry of Law stated in March 1973 that the difficulty in obtaining requisite dye could be said to have made the contract "impossible of performance". The Ministry was, therefore, doubtful whether the contract could be cancelled at the risk and cost of 'B'. In November 1973, 2,650 metres of sub-standard Angola shirting of 152 centimetres width was accepted with 10 per cent (for 1,473 metres) and 12½ per cent (for 1,177 metres) reduction, as the indenter required 24,254 metres (width 152 centimetres) of such sub-standard Angola shirting for scarves and lining.

3.7. In February 1974, the indenter informed the Director General, Supplies and Disposals, that sub-standard Angola Shirting was still needed urgently for scarves and lining and requested him to have the supply of the balance 14,132 metres by 'B' expedited. In March 1974, 'B' however, requested the Director General, Supplies and Disposals to cancel the contract for the balance 14,132 metres of 152 centimetres width. The contract for 14,132 metres was cancelled in that month, in consultation with the Ministry of Law, at the risk and cost of 'B'. The Ministry of Law determined 30th November 1973 as the date of breach.

3.8. A limited tender enquiry was issued on 6th April 1974 for effecting risk purchase of Angola shirting according to specification. Tenders were opened on 23rd April 1974. The indent of the Defence department was for Angola shirting according to specification. Order placed on 'B' in February 1970 was also for Angola shirting according to specification. As 'B' could supply only sub-standard Angola shirting, the indenter accepted, with price reduction, the sub-standard Angola shirting, which was also needed by the Defence department for scarves and lining, and wanted (February 1974) supply of the balance 14,132 metres as sub-standard Angola shirting from 'B'. However, on 3rd May, 1974 *i.e.* after issue of limited tender enquiry, the Director General, Supplies and Disposals drew reference to the indenter's letter of February 1974 and enquired whether sub-standard Angola shirting or specification Angola shirting was needed. The indenter was not told that risk purchase was to be completed by 29th May, 1974. The Ministry stated (November 75) that the indenter was reminded on 24th May, 1974 through the Liaison Officer

(Factories) of the Defence department to furnish the information, called for on 3rd May, 1974, by 25th May, 1974.

3.9. The indentor's reply dated 27th May, 1974 that sub-standard Angola shirting was still needed was received by the Director General, Supplies and Disposals on 3rd June 1974, i.e. after expiry of the date up to which risk purchase was possible. On 6th June, 1974, the indentor was telegraphically informed by the Director General, Supplies and Disposals that sub-standard stores are not purchased by him and wanted to know whether the acceptance of tender should be closed. On 13th June, 1974, the indentor informed the Director General, Supplies and Disposals that since the indent was for Angola shirting according to specification and as risk purchase was involved, Angola shirting according to specification should be purchased.

3.10. As the risk purchase was not effected by 29th May 1974, i.e., the last date up to which risk purchase was possible, the balance 14,132 metres of Angola shirting of 152 centimetres width had to be purchased from 'D' in July 1974 at the rate of Rs. 38 per metre. As compared to the price of 'B'. (Rs. 14.90 per metre), 14,132 metres purchased from firm 'D' cost Rs. 3.26 lakhs more. A demand notice for Rs. 21,280 representing general damages was issued to 'B' in September, 1974. The amount has not yet been recovered from the firm, which obtained a stay order from the Delhi High Court in December, 1974.

[Paragraph 41 of the Report of the Comptroller & Auditor General of India for the year 1974-75, Union Government (Civil)]

3.11. According to the Audit Paragraph an order by DGS&D for supply of 1,36,750 metres of drab Angola shirting of 76 centimetres width, at Rs. 5.28 per metre, to Defence Department was placed on 27 July, 1966 on M/s. Punjab Woollen Textile Mills, Chheharta.

The firm did not make any supply as the increase in price demanded by it in June 1967, consequent on high price it had to pay for imported wool tops and also increase in excise duty, was not allowed. Asked if it was not unusual to link the period of delivery in respect of the order placed in July 1966, with the date of receipt of wool tops by the firm, the Department of Supply have stated :

"It was not unusual to link the period of delivery, with respect to the date of receipt of the imported wool tops, as the firm could only manufacture the stores on receipt of imported wool tops."

3.12. The Committee desired to know how while agreeing to the above condition the DGS&D proposed to ascertain the date of receipt of wool tops by the firm and what were the safeguards taken in this regard. The Department of Supply have stated :

“Firm ‘A’ was expected to intimate the date of receipt of wool to enable the purchaser to refix the delivery date which as per A/T was “to start one month after the receipt of imported wool tops and to be completed within three and a half months thereafter.” In letter dated 25-11-1966 the Junior Field Officer at Ludhiana was asked to keep a watch and find out from the firm the prospect of receipt of raw material and when delivery will commence. He was also told that this was urgent. Again in letter dated 27-10-1967 the Junior Field Officer was asked to confirm from the firm whether they have received the raw material and started manufacturing of the stores.”

3.13. It has been stated that the date of allocation of imported wool tops to this firm by the Textile Commissioner was known to the Director General, Supplies and Disposals, but he did not know the date it had received the wool tops. Enquired as to what efforts were made by the DGS&D to find out the date of receipt of wool tops by the firm, the Ministry have furnished the following chronological sequence of events in regard to the progress of supply of raw material :

- “1. The contract was issued on 27-7-1966.
2. The firm in their letter dated 5-8-66 asked for allocation of raw material and stated that as soon as the allocation is made the wool would have to be combed and then mixed with fibre which takes a lot of time.
3. On 9-1-1967, the Indian Wool Mills Federation approached the Textile Commissioner for permission to issue 58S wool instead of 56S wool to the firm.
4. On 28-3-1967 Telex was sent to the Textile Commissioner for issue of instructions to Federation for release of 58S wool tops.
5. On 24-5-1967 Textile Commissioner was addressed to ask the Federation to expedite supplies.
6. On 21-6-1967 the Federation was also reminded to expedite supplies.

7. On 19-7-1967 the firm 'A' were also asked to obtain the material after making payment and commence supplies.
8. In letter dated 2-8-1967, the firm intimated that they have made payment for the wool tops to the Federation, issued Fibre to wool-combers at Calcutta to comb the wool and blend with fibre.
9. On 27-10-1967, Junior Field Officer, Ludhiana, was asked to check up whether they have received the raw material and started manufacture. There was a report from Calcutta Office that 71 bales of viscose were despatched on August 30th.
10. In letter dated 14-11-1967, the firm reported that they were not receiving any reply from the wool-combers on account of strike and would commence manufacture as soon as the raw material was received.
11. On 1st February, 1968, they had *inter alia* stated that the raw material had been supplied to them after more than a year.
12. From (10) & (11) it can be taken that the raw material was received some time in December, 1967/January, 1968.
13. On 15-6-1968 the firm was asked among other things to intimate date of receipt of wool tops in order to fix the delivery date in accordance with A/T.
14. The firm did not furnish the required data."

3.14. Since the date of allocation of imported wool tops by the Textile Commissioner was known to the DGS&D, the Committee asked if it would not have been possible to ascertain the date of their actual receipt from the import licence/customs authorities/the firms own stock register. The Department of Supply have stated as under :

"As the imported wool tops were released by the Indian Woollen Mills Federation from their imported stock, the date of actual receipt could not be related to the import licence/customs clearance. This could only be ascertained from the firm as explained above but the firm did not furnish the required data."

3.15. The contract with M/s. Punjab Woollen Textile Mills, Chheharta was cancelled in June 1969. As in the absence of requisite data the exact date of breach of contract could not be determined by the Ministry of Law in this case, risk purchase was not possible. However, the Department's claim of Rs. 3.18 lakhs as general damages was referred in September

1970 to an arbitrator who gave an award of Rs. 3100/- only in favour of the Department in February 1975. The committee have been informed by the Department of Supply that the amount of Rs. 3100/- had been adjusted from the security deposit made by the firm against the contract and the balance amount due to the firm was released.

3.16. An order for 50,000 metres of Angola shirting of 152 centimetres width (1 lakh metres in terms of 76 centimetres width) was placed on M/s. Model Woollen & Silk Mills, Verka in February 1970 at Rs. 14.90 per metre. Another order for supply of 18,375 metres of 152 centimetres width (36,750 metres in terms of 76 centimetres width) was placed on M/s. Vohra Textile Mills, Amritsar in March, 1970 at the rate of Rs. 14.85 per metre. This firm completed the supply by December, 1971.

3.17. The Committee desired to know the reasons for placing orders first on M/s. Model Woollen & Silk Mills, Verka and for placing orders for a lesser quantity on M/s. Vohra Textile Mills, Amritsar though the offer of this firm was cheaper. The Department of Supply have explained the position thus :

- “1. Firm ‘B’ quoted Rs. 14.90/metre with assistance for 50,000 metres. Firm ‘C’ actually quoted a higher rate of Rs. 15.45 with assistance. Firm C as well as another firm (who had quoted Rs. 15.50 per metre) were counter-offered the rate of Rs. 14.90. Firm ‘C’ in their letter of 7-3-1970 accepted the counter-offered rate of Rs. 14.90 per metre whatever quantity required. They also offered a special discount of 5 paise per metre if an order for at least 15,000 metres were placed on them.
2. An order for 50,000 metres (152 cm. width) was placed in February, 1970 (while making the counter offer with firm ‘B’ at Rs. 14.90.
3. To avail of the special discount the balance required quantity of 18,375 metres (152 cm.) was covered on firm ‘C.’”

3.18. Upto Jan. 1972, 33,218 metres supplied by M/s. Model Woollen & Silk Mills, Verka was accepted, out of which 4906.75 metres was without any price reduction and only 28311.40 metres was accepted with price reductions, ranging between 2 to 10 per cent, as these did not conform to specifications. The details of material accepted with price reduction as furnished by the Department are as follows :—

“(1) Accepted on 29-6-71	9689.45 mtrs with 7% price reduction.
(2) ,, 26-7-71	10669.10 mtrs with 2% price reduction.
(3) ,, 17-1-72	7952.85 mtrs with 10% price reduction.”

3.19. The details of the deviations from specifications/defects noticed in respect of these supplies, as intimated by the Department of Supply are as under :—

“In respect of 9689.45 metres, the defects were wool contents low being 46 per cent in some cases, quality of wool was lower than 64S in some case off-shade being not within the permissible limits and wash fastness to water was sub-standard, as it bleeds on the cotton piece. In respect of 10,669.10 metres, the defects were variation in share from standard limits and inadequately moth proofed i.e. dieldrin content vary from 0.011 per cent to 0.22 per cent against 0.03 per cent specified.”

In respect of 7952.85 metres the defects were shade/tone variation inferior quality of wool, higher shrinkage, less dieldrin content, sub-standard dye fastness and less end picks.”

3.20. In August, 1972 M/s. Model Woollen & Silk Mills, Verka informed the Director General, Supplies and Disposals, that it had 18,000 metres more, which, however, were not acceptable to the Inspector of Defence Department because sub-standard dyes had been used in that shirting. This firm also stated that it had applied for licence for importing standard dyes, and as licence was not granted it had to use whatever sub-standard dye was available.

3.21. The Committee desired to know as to why the additional quantity of 18,000 metres offered by the firm in August, 1972 was not accepted with a price reduction when upto January 1972, 33218 metres had already been so accepted. The Department of Supply have informed the Committee as follows :

“the Indentor was asked to intimate whether he had any requirement and can make use of the sub-standard material offered by the firm. In October, 1972 the Indentor advised that he would be in a position to make use of the sub-standard material and asked DGS&D to accept the material upto the quantities required by them. Accordingly Inspector was advised to draw samples to ascertain the suitability of the material lying with the firm and the same were forwarded in November, 1972 to CIT&C., Kanpur, for examination and consideration whether the same could be accepted under certain price reduction for manufacture of scarves woollen and lining material. Out of the six samples drawn, only one sample was considered suitable for manufacture of scarves woollen and was recommended for acceptance under 10 per cent price reduction for

the manufacture of scarves woollen. The remaining samples were completely off-shade and exhibited very wide tonal variation. These were considered for acceptance under 12½ per cent price reduction for use as lining material only. The firm was therefore, advised to tender the material for bulk inspection so that whatever the quantity suitable, could be accepted with price reduction, as suggested by the Inspector. As at the time this material was being considered, there were several other contracts also in operation and in May 1973, Indentor advised that his requirement for sub-standard material was upto the limit as under :—

19,546	metres for scarves.
4,708	metres for lining material
24,254	metres

and asked the DGS&D to accept the sub-standard material to the above limited quantity only.”

3.22. According to the Audit Paragraph, in November, 1972 extension of delivery period was allowed to M/s. Model Wollen & Silk Mills, Verka upto December, 1972. The firm neither applied for further extension of delivery period nor made any more supply. On being approached by the Director General, Supplies and Disposals, in February 1973 to state whether the contract could be cancelled at the firm's risk and cost the Ministry of Law stated in March, 1973 that the difficulty in obtaining requisite dye could be said to have made the contract “impossible of performance”. That Ministry was, therefore, doubtful whether the contract could be cancelled at its risk and cost.

However, in November 1973, against the indentor's requirements of 24,254 metres of such sub-standard Angola shirting for scarves and lining 2,650 metres of material supplied by this firm were accepted with 10 per cent (1473 metres) and 12-1/2 per cent (1177 metres) price reduction.

3.24. To a question as to why only 2,650 metres were obtained from the firm when 24,254 metres were required by the indentor and of 18,000 metres had also been offered by it, the Department of Supply have stated :

“Out of 18,000 metres lying with the firm 'B' only 1473 metres could be accepted with 10% price production, as this was the only quantity found suitable in the bulk inspection. In addition, 1177 metres could be accepted with 12-1% price reduction which was the only quantity available out of the 18,000 metres for use of lining material. The remaining quantity was not even suitable for lining material and could not be accepted.”

3.25. The material accepted under 10% price reduction contained the following deviations :

- “(1) Off-shade.
- (2) Inferior quality of wool.
- (3) Higher-shrinkage.
- (4) Less dieldrin.
- (5) Sub-standard dye fastness.
- (6) Less ends and picks.

This material was considered suitable for manufacture of scarves only.”

3.26. The material accepted under 12½ per cent price reduction contained the following deviations :—

- (1) Off-shade and very wide tonal variation.
- (2) Patchy/streaky dye.
- (3) Inferior quality of wool.
- (4) Higher shrinkage.
- (5) Less dieldrin content.
- (6) Sub-standard dye fastness.
- (7) Less ends and picks.

This material was considered suitable for lining material only.

3.27. The Committee then desired to know the date on which the request from the indenter was received in this case. The Ministry have informed the Committee :

“In October, 72, Indenter confirmed his willingness to accept the deviated material upto the quantity indicated by him and thereafter necessary action was taken regarding acceptance of the deviated material to the extent of suitable quantities lying with the firm out of 18,000 metres.”

3.28. In February 1974, the indenter informed the Director General, Supplies and Disposals, that sub-standard Angola shirting was still needed urgently for scarves and lining and requested him to have the supply of the balance 14,132 metres by this firm expedited. In March 1974, it however, requested the Director General, Supplies and Disposals, to cancel the contract for the balance 14,132 metres of 152 centimetres width. The contract

for 14,132 metres was cancelled in that month, in consultation with the Ministry of Law at the firm's risk and cost. The Ministry of Law determined 30 November, 1973 as the date of breach.

In this connection, copies of the Law Ministry's opinion of March, 1973 and March, 1974 are reproduced at Appendix V.

3.29. From the information furnished to the Committee it is seen that while the Law Ministry had earlier (March, 1973) expressed doubts about the cancellation of the contract at the firm's risk and cost this opinion appears to have been reversed subsequently in March, 1974. The Committee therefore desired to know whether the latter opinion had been given on the basis of fresh facts made available. The Ministry of Law, Justice & Company Affairs have clarified the position as under :—

“The matter was examined by this Ministry in some detail and advice was given on 15-3-73 that the contract might be considered to have become incapable of performance for want of raw material. This Ministry, therefore, doubted the wisdom of cancelling the contract on the ground of breach at the risk and cost of the firm. Accordingly a performance notice was given to the firm on 24-3-1973. Pursuant to this notice the firm tendered some sub-standard material which they had in their stock and the Department accepted these stores under Price Reduction. Those stores which were not acceptable even under price reduction, were rejected.

It will be seen that the contract was being kept alive from time to time, the last date of expiry of the contract being 30-11-73. When this Ministry was approached by the Department for advice in March, 1974 on the question of cancellation, the contract was not alive. This Ministry, therefore, advised in the light of later developments (fresh facts) that if the contract had not been kept alive by conduct of the parties subsequent to 30-11-73 the same can be cancelled at the risk and cost of the firm.”

3.30. A limited tender enquiry was issued on 6 April, 1974 for effecting risk purchase of Angola shirting according to specification. Tenders were opened on 23 April, 1974. The indent of the Defence Department was for Angola shirting according to specification. Order placed on M/s. Model Woollen & Silk Mills, Verka in February 1970 was also for Angola shirting according to specification. As this firm could supply only sub-standard Angola shirting, the indenter accepted, with price reduction, the sub-standard Angola shirting which was also needed by the Defence Department—for

scarves and lining, and wanted (February 1974) supply of the balance 14,132 metres as sub-standard Angola shirting from it. However on 3 May, 1974, *i.e.*, after issue of limited tender enquiry, the Director General, Supplies and Disposals drew reference to the indenter's letter of February 1974 and enquired whether sub-standard Angola shirting or specification Angola shirting was needed. The indenter was not told that risk purchase was to be completed by 29 May, 1974. The Ministry stated (November (1975) that the indenter was reminded on 24 May, 1974 through the Liaison Officer (Factories) of the Defence Department to furnish the information called for on 3 May, 1974, by 25 May, 1974.

3.31. Since the indenter had clearly stated in February 1974 that he wanted 14,132 metres of sub-standard shirting for scarves and lining and the tender enquiry of 6 April, 1974 had also been issued to cover the supplies outstanding from M/s. Model Woollen & Silk Mills, Verka, the Committee desired to know the circumstances in which the indenter had been addressed again on 3 May, 1974 to clarify whether sub-standard or specification shirting was required. In elucidation, the Department have stated :

“After cancelling the outstanding quantity against the contract with firm ‘B’, the tender enquiry was issued on 6 April, 1974, to make a valid risk purchase at the risk and cost of firm ‘B’, on account of their failure to supply the material, as per required specification in the contract with them. Legally, to make a valid risk purchase, the Department was required to procure exactly the same specification material as in the cancelled contract. The sub-standard material was being accepted, in consultation with the Indenter, considering his requirement for the same, for making scarves and lining. As such, before finalising the contract against the tender enquiry of 6 April, 1974, the Indenter was asked to confirm whether actually he needed the sub-standard material for use of scarves and lining or the sub-standard material for its original intended use.”

3.32. The reasons for not informing the indenter, while making a reference to him on 3 May, 1974, that the risk purchase was to be completed by 29 May, 1974 have been given by the Ministry as under :—

“As the reply was expected to be received within a fortnight keeping in view that the Indenter's requirement was urgent and there was no reason for the Indenter to delay his reply. However, as the risk purchase was required to be made by 29th May, 1974, the Indenter was expedited on 24th May, 1974, for his reply giving a target date of 27th May, 1974 for his reply. Even a telephone call was booked to the Indenter on 29th May, 1974

to check up the position but the clear reply could not be received as the General Manager, OCF, Shahjahanpur, could not hear the tele-conversation."

3.33. The Indentor's reply dated 27 May, 1974 that sub-standard Angola shirting was still needed was received by the Director General, Supplies and Disposals, on 3 June, 1974, *i.e.*, after expiry of the date up to which risk purchase was possible. On 6 June, 1974 the indentor was telegraphically informed by the Director General, Supplies and Disposals, that sub-standard stores are not purchased by him and wanted to know whether the acceptance of tender should be closed. On 13 June, 1974, the indentor informed the Director General, Supplies and Disposals, that since the indent was for Angola shirting according to specification and as risk purchase was involved, Angola shirting according to specification should be purchased.

3.34. If the sub-standard stores were not purchased by the Director General, Supplies and Disposals, the Committee asked for the reasons for making such an enquiry from the indentor in this regard on 3 May, 1974. The Department of Supply have replied :

"In this letter dated 27-5-74 the Indentor had stated that his requirement for sub-standard material existed. The Indentor was informed in telegram dated 5-6-74 that DGS&D do not purchase sub-standard stores. Before proceeding with the risk purchase it was considered prudent to get clarification whether the requirement was shirting angola sub-standard or shirting angola standard. The Indentor had not specifically indicated his requirement of shirting angola to original specification. It was considered risky to commit the Indentor for procurement @ Rs. 38/- per metre which is more than 2½ times the rate of the original A/T (Rs. 14.90 per metre)."

3.35. As the risk purchase was not effected by 29 May, 1974, *i.e.* the last date up to which risk purchase was possible, the balance 14.132 metres of Angola shirting of 152 centimetres width had to be purchased from M/s. Modella Textile Industries Ltd., Bombay in July 1974 at the rate of Rs. 38 per metre. As compared to the price of M/s. Model Woollen & Silk Mills, Verka (Rs. 14.90 per metre), 14.132 metres purchased from the former firm cost Rs. 3.26 lakhs more. A demand notice for Rs. 21,280 representing general damages was issued to M/s. Model Woollen & Silk Mills, Verka in September 1974. The amount has not yet been recovered from the firm, which obtained a stay order from the Delhi High Court in December, 1974.

3.36. In reply to a question it has been stated that the general damages of Rs. 21,280 were determined on the basis of 7½ per cent of the value of

the cancelled quantity of 14,132.32 metres and the detailed calculations are given at Appendix VI.

3.37. The Department of Supply have further informed that the DGS&D were not able to recover this amount as the firm had obtained stay orders from the Delhi High Court, restraining the Union of India, for deduction of the disputed amount and as the contract was governed by the arbitration clause, the case had been referred to the Arbitration. Shri.....Additional Legal Adviser to the Govt. of India in the Ministry of Law had been appointed as Sole Arbitrator by Director General (S&D) on 30-4-1976. The date of filing the statement of claim by the Union of India was 24-1-77.

3.38. The Audit paragraph has revealed yet another case in which Government had to incur an additional expenditure, apart from the delay of 3 to 8 years, in the procurement of drab Angola shirting for an indenter of Defence Department on account of ambiguous conditions incorporated in the contract and delays in effecting risk purchase by DGS&D. The facts of the case are discussed in the following paragraphs.

3.39. According to the Audit Paragraph an order by DGS&D for supply of 1,36,750 metres of drab Angola shirting of 76 centimetres width at the rate of Rs. 5.28 per metre was placed on M/s. Punjab Woollen Textile Mills, Chbeharta on 27 July, 1966 against an indent dated 23 March, 1966 from the Defence Department. One of the terms and conditions of the contract provided that supply would commence after one month from the date of receipt of the wool tops by the firm and would be completed in 3½ months thereafter. The firm did not make any supply, as the increase in price demanded by it in June 1967 on account of increase of excise duty and high price of imported wool tops, was not allowed. The contract was, therefore, cancelled in June 1969. As the DGS&D was not able to ascertain the date on which the firm received the wool tops, the exact date of breach of the contract could not be determined and thus risk purchase against the firm was not effected. The Department of Supply have stated in this connection that 'it was not unusual to link the period of delivery with respect to the date or receipt of wool tops' and that the firm was expected to intimate the date of receipt of wool tops to enable the purchaser to refix the delivery date. In the opinion of the Committee, the terms and conditions of the contract given to this firm, viz. that the supply would commence after one month from the date of receipt of the imported wool tops and would be completed within 3½ months thereafter contained obvious lacunae which enabled the firm to escape the general damages for Rs. 3.15 lakhs. The Committee desire that the terms and conditions of such contracts should be revised, if necessary, after obtaining legal advice in order to see that these do not suffer from lacunae.

3.40. The Committee regret to note that DGS&D after writing a letter on 25 November, 1966 to the Junior Field Officer, Ludhiana asking him to find out from the firm the prospects of receipt of raw material, took 11 months to remind him. It is all the more regrettable that the DGS&D after issuing the A/T in July 1966, handled the matter in a slipshod manner till 28 March, 1967 when a telex was sent to the Textile Commissioner for issuing the instructions to Indian Wool Mills Federation for release of 588 wool tops to the firm. Again no serious attempt was made by the Department of Supply/DGS&D to find out the actual date of receipt of the raw material by the firm. The result of failure on this account has been that the date for delivery of goods by the firm could not be fixed and the contract ultimately had to be cancelled without risk purchase. The Committee feel that this situation could have been averted had the DGS&D ascertained from the firm's stock register and from other available sources the actual date of receipt of the raw material. To obviate such a situation DGS&D should have made this condition of intimating the date of receipt of raw material obligatory on the part of the firm in the terms of the contract. Also matter should have been followed up with authorities concerned to ensure timely supplies of the material and of the quality required. The Committee would in the circumstances of the case, urge upon the Ministry to investigate the reasons for the lapse in this case with a view to fixing responsibility.

3.41. Further, the Committee have their own doubts about the bona fides of the firm as they feel that the firm deliberately and purposefully suppressed the date of receipt of imported raw material in order to derive maximum advantages on account of escalation of prices, etc. It is also not clear to the Committee as to how the material which was imported/allocated specifically for Defence Supplies was actually used.

3.42. It should have been possible for Government to deal with the matter conclusively instead of allowing the firm to get away with the raw material without meeting the contractual obligation.

3.43. The Committee observe further that the firm had informed DGS&D on 1 February, 1968 that the raw material had been supplied to them after more than a year and would, therefore, like to know whether this fact was brought to the notice of Ministry of Law while referring the case to them for effecting risk purchase against M/s. Punjab Woollen Textile Mills, Chheharta.

3.44. The Committee find that M/s. Vohra Textile Mills, Amritsar on whom the contract for supply of 18,375 metres of Angola Shirting was placed completed the supply whereas M/s. Model Woollen & Silk Mills, Verka could supply 4906.75 metres according to specification and 28311.40

metres with price reduction ranging from 7 to 10 per cent against the order of 50,000 metres of Angola shirting upto January 1972. M/s. Model Woollen & Silk Mills, Verka offered another 18000 metres in August, 1972 but the stores were not accepted by the Inspector of Defence Department due to use of sub-standard dyes. This firm had stated, in this connection, that it had applied for licence for importing standard dyes and as licence was not granted, it had to use whatever sub-standard dye was available. In response to an enquiry the Indentor had, in October 1972, informed the DGS&D that he would be in a position to make use of the sub-standard material offered by the firm and asked them to accept the material upto the quantities required by them. However, against the Indentor's requirements of 24254 metres of such sub-standard Angola shirting for scarves and lining 1473 metres for scarves at 10 per cent and 1177 metres for lining at 12½ per cent price reduction were accepted in November, 1973. The remaining quantity was, as stated by the Department of Supply, 'not even suitable for the lining material and could not be accepted.' It is not clear to the Committee as to why only this firm had difficulty about dye particularly when the other firm viz. M/s. Vohra Textile Mills, Amritsar was able to deliver goods as per specifications.

3.45. The Committee are surprised to note that after a limited tender enquiry was issued on 6 April 1974 for effecting risk purchase of Angola shirting according to specification the DGS&D enquired from the Indentor on 3 May 1974 i.e. whether sub-standard or specification Angola shirting was needed. Even at this stage the Indentor was not specifically informed that the risk purchase was to be completed by 29 May 1974. The Committee take a very serious view for this lapse on the part of the purchase officer as it had cost the Government exchequer an extra expenditure of Rs. 3.26 lakhs in the purchase of 14,132 metres of Angola shirting from M/s. Modella Textile Industries Ltd., Bombay at the rate of Rs. 38 per metre instead of purchasing it from M/s. Model Woollen & Silk Mills, Verka at the rate of Rs. 14.90 per metre. The Committee would like that the responsibility for the lapse should be fixed. The Committee would also urge that Government may devise a fool proof method so that such costly lapses do not recur.

3.46. The Committee would also like to be informed of the latest position regarding recovery of Rs. 21,280 being the general damages, from M/s. Model Woollen & Silk Mills, Verka.

CHAPTER IV

PURCHASE OF GUN METAL INGOTS

Audit Paragraph

4.1. A trial order for supply of 13 tonnes of gun metal ingots was placed on 12th July, 1972 on firm 'A' a small scale unit, at the rate of Rs. 13.25 per Kg., the supply was to be completed by 31st August, 1972. The firm did not make any supply by the due date. On 20th September, 1972 it applied for extension of the delivery period and made another such request on 12th October, 1972. On 25th November, 1972 the delivery period was extended up to 31st December, 1972 subject to recovery of liquidated damages. On 22nd December, 1972 'A' applied for further extension of delivery period up to 28th February, 1973 on account of power shortage. The acceptance of tender was thereafter cancelled on 13th February, 1973 at the risk and cost of 'A'.

4.2. A risk purchase tender enquiry was issued on 24th February, 1973. A copy of the tender notice was also sent to firm 'A' on 24th February, 1973 intimating it that it would have to furnish 10 per cent security deposit in view of its past default. Of the 16 offers received against the risk purchase enquiry and opened on 10th April, 1973, lowest quotation (Rs. 13.25) was from 'A' offering 50 per cent of the quantity within 30 days from the date of formal acceptance of tender and the balance within 30 days from the date of first supply. That firm, however, requested waiver of security deposit as it was a small scale unit. The next higher offer was from firm 'B' and 'C' at the rate of Rs. 15.09 per Kg. In response to an enquiry from the Director General, Supplies and Disposals, on 17th April, 1973, a reply was received from 'A' on 21st April, 1973 intimating that it was agreeable to pay 10 per cent security deposit.

4.3. 'A' however, did not furnish any security deposit till 25th April, 1973 i.e. the date upto which its offer was valid. Besides, the Director General Supplies and Disposals, was aware that the prices had increased, as he had placed orders for gun metal ingots in February 1973 at price between Rs. 14.18 and Rs. 14.39. Besides, price fixed by Minerals and Metals Trading Corporation for actual users of copper, which constitutes about 88 per cent of gun metal

alloy, increased from Rs. 14.25 per Kg. for January 1973 to February 1973 to Rs. 16.78 per Kg. for March 1973 and to Rs. 19.09 per Kg. for April 1973—June 1973. As, however, the validity of the offer of 'A' was expiring on 25th April, 1973, the Director General, Supplies and Disposals placed an advance acceptance of tender on it on that day requiring it to furnish the security deposit within 15 days of the formal acceptance of tender. The formal acceptance of tender was issued on 3rd May, 1973. 'A' however, did not furnish any security deposit. As it failed to make any supply, the acceptance of tender was cancelled on 3rd November, 1973 at its risk and cost. Ultimately, against a further tender enquiry dated 12th November 1973, 13 tonnes of gun metal ingots were ordered on 'C' in January 1974, at the rates of Rs. 29.45 per Kg. for 7 tonnes and Rs. 29.71 per Kg. for the balance 6 tonnes. 'C' completed the supply in May 1974. Had the 13 tonnes been purchased from 'B' and/or 'C' at the rate of Rs. 15.09 per Kg. offered in April 1973 the expenditure would have been less by about Rs. 2 lakhs.

4.4. A demand for Rs. 2.25 lakhs, being the difference between the price payable to 'A' and the price at which the ingots were purchased in May 1974, was raised against it on 24th April, 1974; the amount has not yet been recovered (October 1975). The Director General, Supplies and Disposals stated (December 1975) that the case "is being referred to Arbitration for recovery of the extra expenditure in accordance with the legal advice."

[Paragraph 42 of the Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Civil)]

4.5. According to the Audit Paragraph, a trial order for supply of 13 tonnes of gun metal ingots was placed on 12 July, 1972 on M/s. Metal Smelting and Engg. Works, Calcutta at the rate of Rs. 13.25 per Kg. and the supply was to be completed by 31st August, 1972. Since the firm failed to make any supply by the due date, it applied for extension of the delivery period on 20 September, 1972. The delivery period was extended on 25 November, 1972 up to 31 December, 1972. The Committee asked for the reasons for the delay of over two months in granting the extension. The Department of Supply have stated :

"Firm's letters dated 20-9-1972 and 12-10-1972 were received in the DGS&D on 23-9-1972 and 18-10-1972 respectively. The file was submitted by the dealing Assistant on 13-11-1972 when the Assistant Director desired the price trend to be indicated. The file was resubmitted on 18-11-1972 with the remark that no fresh order for the store under reference had been issued after 12-7-1972. As such, it was taken that there

was no lower price trend and a decision was taken on 21-11-1972 at the level of Deputy Director to extent the delivery date by one month. Action is being taken against those responsible for the delay.”

4.6. In reply to another question as to what were the grounds on which the extension was granted, the Ministry have stated :

“No specific grounds were indicated by the firm in their letters dated 20-9-1972 and 12-10-1972 for granting extension. Since the extension applied for was only for one month, their request was conceded and the necessary Amendment Letter issued on 25-11-1972. The delivery date was extended upto 31-12-1972 in the Standard form with reservation of rights to levy liquidated damages.”

4.7. On 22 December, 1972, the firm applied for further extension of delivery period up to 28 February, 1973 on account of power shortage. However, the acceptance of Tender was cancelled on 13 February, 1973 at risk and cost of the firm. Giving the reasons for not acceding to the request of the firm for further extension and cancellation of the A/T. the Department of Supply have stated :

“On 22-12-1972, the firm came forward for further extension of delivery period upto 28-2-1973 on the ground that production of almost all the factories had been hampered due to extreme scarcity of the Electric Power in the entire city of Calcutta. A Telex reference was made to Director of Inspection, Calcutta on 3-1-1973 to indicate upto-date position of supply. He advised on 5-1-1973 that no stores had been rendered by the firm for inspection upto that date. In view of the fact that the firm had not offered for inspection even a part quantity within the extended delivery period, the file was referred to the Ministry of Law for advice as to whether the DGS&D was bound to grant extension, as applied for by the firm or whether the contract could be cancelled at the risk and cost of the firm. Ministry of Law opined on 23-1-1973 that scarcity in Electric Power might not be covered by the *Force-Majeur* clause. Further more, the firm had not stated how long and how much the Electric Shortage was felt by them and as such, the contract should be cancelled at the risk and cost of the firm treating 31-12-1972 as the date of breach. Meanwhile, the firm under their letter dated 20-1-1973 furnished a ‘Press Clipping’ which indicated that the State Govt. had introduced rationing of Power with effect from 3-1-1973. The matter was again referred to the Ministry of Law on 1-2-1973 and they advised on

5-2-1973 that their earlier opinion did not require any modification. Thereafter, the contract dated 12-7-1972 was cancelled at the risk and cost of the firm on 13-2-1973."

4.8. According to the Audit Paragraph a risk purchase tender enquiry was issued on 24th February, 1973. A copy of the tender notice was also sent to M/s. Metal Smelting & Engg. Works, Calcutta on 24th February, 1973 intimating it that it would have to furnish 10 per cent security deposit in view of its past default. Of the 16 offers received against the risk purchase enquiry and opened on 10 April, 1973, lowest quotation (Rs. 13.25) was from this firm offering 50 per cent of the quantity within 30 days from the date of formal acceptance of tender and the balance within 30 days from the date of first supply. The firm, however, requested waiver of security deposit as it was a small scale unit. The next higher offer was from M/s. Nu-Metalloy Casting Works, Calcutta and M/s. Commercial Metal Corporation, Calcutta at the rate of Rs. 15.09 per kg. In response to an enquiry from the Director General, Supplies and Disposals, on 17 April, 1973, a reply was received from M/s. Metal Smelting & Engg. Works, Calcutta on 21 April, 1973, intimating that it was agreeable to pay 10 per cent security deposit. Since, the validity of the offer of this firm was expiring on 25 April, 1973 the Director General, Supplies and Disposals placed an advance acceptance of tender on it on that day requiring it to furnish the security deposit within 15 days of the formal acceptance of tender. The formal acceptance of tender was issued on 3 May, 1973. This firm, however, did not furnish any security deposit. As it failed to make any supply, the acceptance of tender was cancelled on 3 November, 1973 at its risk and cost.

4.9. It may be relevant to mention here that it has been provided in Para 182 of Chapter V of the DGS & D Manual that "in case of risk purchase enquiries, if the quotation of the defaulting firm happens to be the lowest acceptable, they should be asked to furnish the security deposit equal to 10% of the proposed contract value within a target date with a clear warning that their offer will be ignored if the security amount is not furnished by the specified date. In the event of failure of the firm to furnish the security deposit by the specified date, their offer may be ignored and placement of the contract on the next best offer considered. While fixing the target date as indicated above, care should be taken to see that the other offers will be valid for acceptance up to a period beyond the target date so that the placement of order on other tenderers may be considered in the event of failure of the defaulting firm to furnish the security deposit. It should thus, be ensured that there is adequate margin between the target date set for furnishing the security deposit and the date of expiry of the validity of other tenders."

4.10. Since M/s. Metal Smelting & Engg. Works, Calcutta had already defaulted and had also not furnished the security deposit specifically asked for when submitting the tender against risk purchase enquiry, the Committee asked if it was prudent to have placed the order on the firm, particularly in the context of its having quoted the old rates although prices of gun metal ingots had in the meantime gone up. The Department of Supply, in a note furnished to the Committee have explained thus :

“In this tender, the defaulting firm had quoted the lowest acceptable rate and if their offer had been ignored, it might not have been possible to claim the risk-purchase difference. Defaulting firms often quote very low prices in order to secure the fresh contract and reduce the loss on account of recovery of risk-purchase differential. The rules, however, require that in the case of risk-purchase enquiries, if the quotation of the defaulting firm happens to be the lowest acceptable, they should be asked to furnish the security Deposit equal to 10% of the proposed contract value within a target date with a clear warning that their offer would be ignored if the security amount is not furnished by the specified date. The circumstances in which the order was placed without obtaining security deposit are under investigation and explanations of the concerned officials have been called for.”

4.11. The Department of Supply had informed Audit (October, 1975) that “The risk purchase A/T was placed on the defaulting firm keeping in view of the fact that they had already manufactured 50% of the goods and reason weighed in their favour for issuing the A/T as DGS&D would have obliged to pay Rs. 25,000 extra in case the firms offer was ignored. The order was placed on them in good faith.”

4.12. The Committee desired to know as to how the D.G.S. & D. had ensured that the firm had actually manufactured 50 per cent of the material ordered on it. The Department of Supply have stated :

“Prior to cancellation of the contract dated 12-7-1972, the Progress Wing at Calcutta had intimated in their letter of 25-1-1973 that it had been reported to them that a portion of the quantity on order was lying ready for Inspection. The firm in their tender dated 7-4-1973 stated that they could supply 50% from ready stock within 30 days from the receipt of the formal contract and balance 50% within 30 days from the date of first supply. There appeared to be no reason to disbelieve the statement made in the tender.”

4.13. Enquired as to why the A/T was not cancelled when the firm did not furnish the requisite security deposit, the Department of Supply have replied :

“In terms of the risk-purchase contract dated 3-5-1973, security deposit was to be furnished by the firm by 21-5-1973. On receipt of the advance acceptance of their dated 25-4-1973, the firm intimated on 30-4-1973 that they would furnish the necessary 10% Security Deposit by Bank Guarantee and requested to be informed of the procedure to be adopted. They also desired that necessary prescribed forms, if any, might be furnished to them. The standard Guarantee Bond was sent alongwith the formal contract dated 3-5-1973. The lapse in not keeping a watch on furnishing of Security Deposit by the prescribed date is under investigation.”

4.14. As the supplies in this case were to be completed by 10 August, 1973, the Committee desired to know the reasons for taking more than 2½ months in cancelling the A/T, particularly when the firm had defaulted and the market prices were rising. The Ministry have given the following reasons in this connection :

“The contract delivery date expired on 10-8-1973. A Telex reference was made to Regional Office at Calcutta on 3-9-1973 to intimate prospects of supply. A reply was received on 7-9-1973 that the firm was arranging for security deposit in the form of Guarantee Bond and that thereafter they would start manufacture and would complete within two weeks. A further reference was made to the Calcutta Office on 22-9-1973 to advise the firm to apply for extension of delivery period alongwith the Bank Guarantee as per form already supplied alongwith the contract. On 3-10-1973 a Telegram was received from the Calcutta Office that as the prices had gone up, the firm was unable to apply for extension of delivery date unless the contract price was enhanced. It was stated further that the firm would write to the DGS&D next week. In the meantime, a reference was made to the Ministry of Law on 24-9-1973 enquiring if the contract could be cancelled at the risk and cost of the firm. They desired that the copies of correspondence, if any, exchanged between the Progress Wing and the firm might be placed on record. It was explained to them by the DGS&D on 9-10-1973 that the Progress Staff contract the firms (without commitment) in person and no correspondence is made with them. Ministry of Law, then opined on 15-10-1973 that if the position earlier

indicated by the Progress Wing had been gathered from the firm only orally and without entering into any correspondence with them, then it was open to the purchaser to cancel the contract at firm's risk and cost. Thereafter, Progress Wing was asked by Telex on 17-10-1973 to confirm that they did not enter into any correspondence with the firm which was confirmed in their Telex dated 18-10-1973. On receipt of this confirmation, a decision was taken on 24-10-1973 to cancel the contract at firm's risk and expense. Necessary cancellation letter was issued on 3-11-1973."

4.15. The Audit Paragraph further states that ultimately, against a further tender enquiry dated 12 November, 1973, 13 tonnes of gun metal ingots were ordered on M/s. Commercial Metal Corporation, Calcutta in January, 1974, at the rates of Rs. 29.45 per kg. for 7 tonnes and Rs. 29.71 per kg. for the balance 6 tonnes. This firm completed the supply in May, 1974. Had the 13 tonnes been purchased from M/s. Nu-Metalloy Casting Works, Calcutta and/or M/s. Commercial Metal Corp., Calcutta at the rate of Rs. 15.09 per kg. offered in April, 1973 the expenditure would have been less by about Rs. 2 lakhs.

4.16. A demand for Rs. 2.25 lakhs, being the difference between the price payable to M/s. Metal Smelting & Engineering Works, Calcutta and the price at which the ingots were purchased in May, 1974, was raised against it on 24 April, 1974; the amount has not yet been recovered (October, 1975). The Director General, Supplies & Disposals stated (December, 1975) that the case "is being referred to Arbitration for recovery of the extra expenditure in accordance with the legal advice."

4.17. The Department of Supply stated (February, 1976) to Audit that "having regard to the unprecedented increase in the cost of raw material required for the manufacture of 'Gun Metal Ingots' (i.e. Copper, Zinc and Lead) between February, 1973 and December, 1973, it is difficult now to conjecture what would have been the performance of the two firms in question if the orders had been placed on them in April, 1973."

4.18. The Committee desired to know whether the case has been referred to arbitration for recovery of extra expenditure and enquired about the present position of the recovery. The Department have informed the Committee as under :

"It is confirmed that the case has already been referred to arbitration for recovery of the extra expenditure. The Arbitrator was appointed on 10-5-1976.

The Government has submitted its claim before the Arbitrator. Outcome is awaited."

4.19. The Audit Para reveals how on account of the failure on the part of a supplier to supply 13 tonnes of gun metal ingots at the rate of Rs. 13.25 per kg., Government had to incur an extra expenditure of Rs. 2 lakhs by farming out the contract to another firm at a higher price. The facts of the case and the observations of the Committee are given in the following paragraphs.

4.20. The Committee are unhappy to note that on the request for extension of one month's time made by the firm on 20 September, 1972, i.e. 20 days after the stipulated delivery period, followed by another request made on 12 October, 1972, the delivery period was extended by the DGS&D only on 25 November, 1972 i.e. about three months after the stipulated delivery date viz. 31 August, 1972. According to the prescribed procedure extension in the date of delivery is to be granted within 7 days in such cases. The Committee are not at all satisfied with the explanation that has been given to the Committee for the delay of two months viz. "the necessary file was submitted by the dealing Assistant on 13 November, 1972". This only indicates an utter lack of supervisory control over the staff in DGS&D. The Committee are surprised further to learn that while asking for extensions of date of delivery, no specific grounds were indicated by the firm and the DGS&D had not even cared to enquire into the reasons for extension in this case inspite of the fact that the period of one month for which the firm sought extension had already expired on 25 November, 1972 i.e. the date on which the amendment letter extending the date of delivery upto 31 December, 1972 was issued. This had virtually resulted in extension of four months delivery period instead of one month applied for by the firm. Though the Department have informed the Committee that action is being taken against those responsible for the delay, the Committee would like to be informed of the nature of action taken on the defaulting officials. Government should ensure that there was no collusion between the firm and the DGS&D officials in this particular case. The Committee would also like that instructions should be issued to all concerned to ensure strict observance of the prescribed procedure in granting extensions in the date of delivery failing which they will be liable to administrative and disciplinary action.

4.21. The Committee further regret to note that knowing fully the earlier failure of M/s. Metal Smelting & Engineering Works, Calcutta to deliver the goods, DGS&D placed an advance acceptance of tender on 25 April, 1973 subject to the condition that it should furnish the security deposit within 15 days of the formal acceptance of tender which was

issued on 3 May, 1973. As the firm neither furnished any security nor did it supply any stores, the A/T was cancelled on 3 November, 1973. The Committee take a very serious view of the placement of order on this defaulting firm in contravention of the rules which provide that "in the event of failure of the firm to furnish the security deposit by the specified date, their offer may be ignored and placement of the contract on the next best offer considered". The Department of Supply have, in this connection, stated that 'the circumstances in which the order was placed without obtaining security deposit are under investigation and explanations of the concerned officials have been called for'. The Committee would like to know the outcome of investigation and the further action taken against the persons found responsible as also the remedial measures taken to obviate such lapses in future.

4.22. The Committee would further like the Government to enquire as to why the DGS&D had not cancelled the contract immediately when the firm failed to fulfil their contractual obligations in depositing the security by the 21 May, 1973 as provided in the A/T instead of cancelling it 5½ months thereafter on 3 November, 1973.

4.23. According to Audit Paragraph this firm offered to supply against the risk purchase enquiry 50 per cent of the quantity within 30 days from the date of formal acceptance of tender and the balance within 30 days from the date of first supply. The Committee is unable to understand as to why the firm was allowed a period of 3 months to complete the supplies by 10 August, 1973 against their offer of 2 months.

4.24. The Committee are constrained to point out that this case has been handled in DGS&D in a most casual and perfunctory manner. It has been explained by the Department of Supply in October, 1975 that 'the risk purchase A/T was placed on the defaulting firm keeping in view of the fact that they had already manufactured 50 per cent of the goods'. The progress wing at Calcutta had also intimated in their letter of 25 January, 1973 that it had been reported to them that a portion of the quantity ordered was lying ready for inspection. Surprisingly enough, the Progress Wing at Calcutta did not satisfy itself of the genuineness of the report submitted to it before writing to the DGS&D. Even the DGS&D, it appears, did not verify whether the firm had actually manufactured 50 per cent of the goods before placing the risk purchase A/T on this firm. The Committee desire that necessary action should be initiated forthwith to bring to book officers found responsible on this account.

4.25. The Committee note that a demand for Rs. 2.25 lakhs, being the difference between the price payable to M/s. Metal Smelting & Engineering Works, Calcutta and the price at which the gun metal ingots were subse-

quently purchased from M/s. Commercial Metal Corporation, Calcutta (vide para 4.16 above) in May, 1974, was raised against the former firm on 24 April, 1974. The Department of Supply have informed the Committee on 14 December, 1976 that "the case has already been referred to arbitration for recovery of the extra expenditure. The Arbitrator was appointed on 10 May, 1976. The Government has submitted its claim before the Arbitrator". The Committee would like to know in due course the progress made in the matter.

NEW DELHI ;

December 9, 1977

Agrahayana 18, 1899 (S)

C. M. STEPHEN,

Chairman;

Public Accounts Committee

APPENDIX I

(Vide Para 1.18)

A statement showing the details of the firms who have quoted in response to the tender enquiry, the rates offered, other terms and conditions and the results of verification of their production capacity.

S. No.	Name of the Tenderer	Rate quoted	Salient terms and conditions	Capacity per month as reported by Defence Inspectorate in terms of value
1	2	3	4	5
1.	M/s. Export & Import Interprise, Delhi.	Rs. 910	FOR Delhi S.T. extra delivery to start three weeks from receipt of order.	Nil.
2.	Kanpur Tent Fy.	855+Packing charges Rs. 6/-	FOR from the delivery Kanpur, S.T. extra 1100 nos. per month.	Not known.
3.	M/s. Industrial Interprise, Kanpur	840+packing charges Rs. 8/-	FOR Kanpur, delivery goods worth Rs. 2 lakhs per month.	appro. Rs. 9,000
4.	PWM Tent Factory, Delhi.	Rs. 880+packing charges Rs. 5/-	FOR Delhi S.T. extra delivery 2 weeks for 3100 nos. only.	Rs. 15 to 20 lakhs.
5.	Marwar Tent Fy., Jodhpur.	Rs. 890+packing charges Rs. 8/-	FOR Jodhpur/Delhi S.T. extra DP stores worth Rs. 5 lakhs per month.	Rs. 3 to 5 lakhs.
6.	Birla Cotton Spg. & Wvg. Mills, Delhi.	Rs. 881+packing charges Rs. 5/-	FOR Delhi/Kishan Ganj S.T. extra DP Rs. 12 to 13 lakhs per month.	Rs. 10 to 15 lakhs.
7.	Bijli Cotton Mills, Hathras.	Rs. 924+packing charges Rs. 8/-	FOR Hathras, S.T. extra, delivery Rs. 4 lakhs per month.	Rs. 5 to 7 lakhs.
8.	S. P. Industries, Kanpur.	Rs. 968	FOR Kanpur, S.T. extra stores worth Rs. 4 lakhs per month.	Not known.

1	2	3	4	5
9.	P.C. Bhandari & Co., Kanpur.	Rs. 905 (Revised rate for vat O.G.)	FOR Kanpur, S.T. extra DP 4 lakhs per month.	Rs. 2 lakhs.
10.	Niranjanlal Dalmia, Bombay.	Rs. 870 + packing charges Rs. 8/-	FOR Delhi, S.T. extra delivery Rs. 4 to 6 lakhs per month.	Rs. 6 lakhs.
11.	Basheshernath & Co., Kanpur.	Rs. 950/-	FOR Delhi, S.T. extra delivery Rs. 3 lakhs per month.	Rs. 2 to 3 lakhs.
12.	Globe Tent and Clothing Corporation, New Delhi.	Rs. 869 S.T. extra.	FOR Faridabad delivery 2 lakhs per month.	Not known
13.	R.S. Atmaram Suri & Sons, Delhi.	Rs. 861 + packing charges Rs. 6/- S.T. extra.	FOR free delivery at IGS stores delivery Rs. 8 lakhs per month.	Rs. 6 to 8 lakhs.
14.	N.K. Textiles, Delhi.	Rs. 831 for sulphur colour and Rs. 861 for vat & OG colour + packing charges Rs. 4 (emergency and Rs. 10 full).	FOR Hathras, S.T. extra delivery Rs. 15 to 20 lakhs per month.	Rs. 5 to 7 lakhs.
15.	Delhi Housing & Fin. Corpn., New Delhi.	Rs. 915 packing charges Rs. 5/-	FOR Sahibabad S.T. extra delivery Rs. 2 lakh per month.	Inspector reported firm closed.
16.	Shubhkarandes Chiranjilal, Delhi.	Rs. 890 + packing charges Rs. 5/-	FOR Delhi, S.T. extra DP within 2 months after receipt of order.	Rs. 10 to 15 lakhs.
17.	Ankay Cloth & Genl. Mills, Hathras.	Rs. 924 + packing charges Rs. 8/-	FOR Hathras, S.T. extra DP Rs. 3 lakhs per month.	Not stated
18.	Model Tent Fy., Delhi.	Rs. 858 + packing charges Rs. 8/-	FOR Delhi S.T. extra delivery period Rs. 3 lakhs for month (telegraphic quotation).	Rs. 05 to 1 lakhs per month.
19.	Raza Textiles, Rampur.	Rs. 874 + packing charges Rs. 6/-	Telegraphic quotation	Not known.
20.	Dying Textiles, Kanpur.	Rs. 874 + packing charges Rs. 6/-	FOR Kanpur S.T. extra delivery Rs. 2 to 4 lakhs per month (telegraphic quotation).	2 lakhs

1	2	3	4	5
Delayed TENDERS				
21.	Consolit, Kanpur Consolidated Suppliers.	Rs. 785	FOR Kanpur S.T. extra DP Rs. 2 lakhs per month inspection at firms premises (delayed tender).	Rs. 18 for some type of tent.
22.	Sethi Tent House, New Delhi.	Rs. 855	FOR Delhi Sales Tax extra.	Rs. 0.5 to 1 lakh per month.
<i>Late tenders received from the following firms :</i>				
23.	M/s. K.C. Textiles, Agra.	Rs. 910 + packing charges 350/-	FOR Agra delivery Rs. 4 lakhs per month S.T. extra.	Rs. 4 to 5 lakhs.
24.	Ajudhia Textiles, Delhi.	Rs. 895 + packing charges Rs. 4 S.T. extra.	FOR Sahibabad Delhi delivery Rs. 6 lakhs per month quoted for 1300 nos. only.	Rs. 8 to 10 lakhs.
25.	Behari Newar Fy., Agra.	Rs. 1081 + packing charges Rs. 2/-	Sales Tax extra delivery Rs. 1 lakh per month.	Nil.

APPENDIX II

(Vide para 1.29 & 1.30)

Capacity Report furnished by I.G.S. in October, 1965

Copy of letter No. G/40/3/CPS dt. 8-10-1965 from the Ministry of Defence (DGI), Inspectorate of General Stores, North India, Anand Parbat, New Delhi-5 addressed to the Director of Supplies (Textiles), C.G.O., Bldg., 5th Floor, New Marine Lines, Bombay-1.

Sub :—Production capacity—Army Tentage.

Reg :—D. of S. (Tax) letter No. BOM/PT/Misc|dt. 17-9-1965.

The estimated production capacity of Army Tentage in respect of the firms located in this area is appended below :—

Sl. No.	Name of the firm	Est. Production capacity per month in terms of value in Lacs.
1.	M/s. R.S. Atma Ram Suri & Sons, Delhi	6 to 8
2.	M/s. Bāshesharnath & Co., New Delhi	2 to 3
3.	M/s. Birla Cotton Spg. & Wvg. Mills Ltd., Delhi	10 to 15
4.	M/s. Delhi Housing & Finance Corpn., New Delhi	Since closed
5.	M/s. N.C. Industries, Agra	1 to 2
6.	M/s. Marwar Tent Factory, Jodhpur	3 to 5
7.	M/s. Panipat Woollen & Gen. Mills, New Delhi	15 to 20
8.	M/s. Shiamlal Chimanlal, Agra	8 to 10
9.	M/s. K.C. Textiles, Agra	4 to 5
10.	M/s. N.K. Textiles, Delhi	5 to 7
11.	M/s. Bijli Cotton Mills, Hathras	5 to 7
12.	M/s. Model Tent Factory, New Delhi	0.5 to 1
13.	M/s. Shubhkarandas Chiranjilal, Delhi	10 to 15
14.	M/s. Sethi Tent House, Delhi	0.5 to 1
15.	M/s. Ajudhia Textile Mills Ltd., Delhi	8 to 10
16.	M/s. Modi Spg. & Wvg. Mills Co. Ltd., Modinagar	Not interested
17.	M/s. Baijnath Asharfilal, Ambala Cantt.	0.5 to 1
18.	M/s. Akal Printing & Dyeing Works, Delhi-6	2 to 3
19.	M/s. Raza Textiles Ltd., Rampur (U.P.)	2 to 3
20.	M/s. Gupta Brothers, Delhi	3 to 4
21.	M/s. The Technological Institute of Textiles, Bhiwani. (Proprietors—M/s. Birla Education Trust, Pilani)	2 to 3

The above firms are in a position to provide facilities for inspection at their premises. In case any contracts are placed with them for supply of Army Tentage, the terms of delivery should be clear cut 'FOR' making the firms responsible for arranging packing and despatch of stores to the consignee.

Capacity figures in respect of the under-noted firms will follow :—

1. M/s. Export & Import Enterprises, New Delhi.
2. M/s. Ankay Cloth & General Mills Ltd., Hathras.
3. M/s. Behari Newar Factory, Agra.
4. M/s. Phelps & Co. Pvt. Ltd., New Delhi.
5. M/s. Lal Singh Sethi & Sons, Bombay. (Since the factory located at Delhi).

Station Ujjain falls within the inspection jurisdiction of I.G.S., West India, capacity figures in respect of M/s. Binod Mills Co. Ltd., Agra Road, Ujjain may therefore please be ascertained from the I.G.S. West India, Bombay.

Sd/-

Lt. Col.

INSPECTOR

(P. B. Kapur)

Copy to :—

1. The Chief Inspector, CIT&C., Kanpur.

Ref :—CIT&C letter No. S/6241/A/TC-6 dt. 21 Sept. 65 addressed to the Officer Incharge, TSID, New Delhi, Kanpur and Bombay and further to this Inspectorate Telegram of even No. dated 30-9-1965.

The Director of Research & Development (Gen.)
Department of Defence Production (TD-20),
Ministry of Defence (DGI), Govt. of India,
DHQ PO New Delhi-11.

APPENDIX III

(Vide para 1.41)

A copy of the Ministry of Law's opinion dt. 10th March, 1971.

Extracts from file No. TWL-2/BTX-8/472/73-R/PAOD/111 Vol. I

As for the question whether the advance telegraphic acceptance of tender dated 18-11-1970 followed by a post confirmatory copy of the same to the firm concluded the contract, it may be stated that it can be fairly contended that the said advance telegraphic acceptance of tender concluded the contract. This view finds support from the case of *M/s. Chiranjilal Multani (Pvt.) Ltd. Vs. Union of India*, AIR 1963 Punj, 372 where the facts were practically identical. I would however, suggest that with a view to avoid all controversy in the matter, we may, in future, mention in the advance telegraphic acceptance itself that the tender is being accepted for and on behalf of the President of India. Necessary instructions may be issued in this direction.

2. Since the contract had been concluded with the issue of the advance acceptance telegram, there was no occasion for the firm to take any objection with regard to the execution of the contract. A concluded contract having come into effect with the issue of the advance acceptance telegram on 18-11-1970, there was nothing wrong in the firm writing on 19-12-1970 that in the absence of a formal A/T it was not possible for them to offer stores which were lying ready with them for inspection in their factory.

3. Upto 19-12-1970 when the firm wrote the said letter there would appear to be little doubt that a validity concluded contract was in existence.

4. It is, however, to be observed that a contract envisages mutual rights and obligations. If one of the parties does not fulfil its obligations and thus prevents the other party from fulfilling his contractual obligations, it is certainly open to the latter to take the stand that a breach of the contract has been committed by the other. It is equally open to him to revoke the contract. In this particular case, it was obvious that it was not possible for the firm to supply any stores without the same having been passed in inspection and inspection could not take place without the confirmatory A/T having been issued and copy thereof sent to the Inspector for necessary guidance. In this particular case, the firm waited for one full month after

the issue of the advance acceptance telegram before addressing the D.G.S. & D. on 19-12-1970. Unfortunately even after the receipt of the letter of the firm dated 19-12-70 no action was taken to issue the confirmatory A/T for about 25 days.

5. Para 123 of DGS&D Manual would, no doubt, be in the nature of a guideline to be followed by Purchase Officers and cannot be considered to create any binding legal and contractual obligation, but the same cannot be said of clause 15 of form DGS&D-100 which states that in cases where acceptance is communicated by telegram or by express letter, the formal acceptance of tender will be forwarded to the firm as soon as possible. It would not appear to be possible to convince the Arbitrator or a Court of Law that the time of about two months taken in the issuance of the confirmatory A/T was a reasonable time. Having thus failed to fulfil its contractual obligations and having prevented the firm from taking steps to commence the supplies, it would not be possible for the DGS&D to take resort to the stipulation that the delivery was to commence 15 days after the receipt of formal A/T at the rate of Rs. 5 lakhs worth of goods per month.

6. It also appears to be difficult in the circumstances of the case to contend that the formal A/T was put in the course of transmission to the firm on the 13th January, 1971, *i.e.* before the firm expressed their intention to repudiate the contract by telegram dated 15-1-1971. Para 123 of DGS&D Manual cannot be invoked in the present case. It only provides that where the post is the medium of communication between the parties, the acceptance is complete as soon as it is posted. This Paragraph has reference only to the initial acceptance of the tender and not to cases where confirmatory A/T is issued in pursuance of a telegraphic acceptance. The contract had already come into existence with the issue of the Advance Acceptance Telegram and there could be no question of further Acceptance by the confirmatory A/T.

7. Considering all the facts and circumstances of the case, there would appear to be no reasonable chance of successfully enforcing the contract against the firm. That being the position, question of legally enforcing the delivery of goods worth Rs. 5 lakhs at the contracted rates does not arise. There can, however, be no legal objection to enter into an agreement with the firm for supply of stores worth Rs. 5 lakhs at the contracted rates if the firm is willing and agreeable to the same.

Sd/-

A. S. CHAUDHRI,
Joint Secretary & Legal Advisor.

[Ministry of Supply (Shri N. P. Dube)].

10-3-71

APPENDIX IV

(Vide para 2.18)

Texts of the Reports submitted by the representatives of the D.G.S.&D. between February, 1971 and May, 1972.

(Firm was contacted 18 times on different rates) :

<i>Date when contacted</i>	<i>Remarks/Report</i>
12-2-1971:	No further progress has been made by the firm. The delay in supplies is reported to be due to non-availability of raw material. Further, Shri A.K. Dass of the firm has stated that now they have made arrangement for the raw material and intend to write for 3 months extension in Delivery Period in a day or so.
25-5-1971:	Firm have been again visited to-day. Shri Dass of the firm has been contacted. It is reported that he has so far not applied for extension in Delivery Period. Firm's attention has been drawn to the earlier visit of JFO and their intention to apply for extension in D/P. Firm have been again expedited and they have again promised to write to us for extension in D/P within a few days.
27-7-1971:	Visited the firm to-day but no position could be obtained since Shri A.K. Dass dealing with DGS&D cases was reported to be out of station. However, the firm will again be chased during next week and needful will be done.
3-9-1971:	Visited the firm to-day and contacted Shri A.K. Dass of the firm. No further progress has been made by the firm. The firm have again stated that they intend to write for extension in Delivery Period within a week's time. However, the firm have not given any definite reasons for not applying for extension in D/P so far. Further, it may be pointed out that during the discussions with Shri Dass it transpired that they do not seem to be much interested in the execution of the order.
17-1-1972:	Visited the firm on 17-1-1972. Mr. Dass was not available.
20-1-1972:	Visited the firm's office at Kashmere Gate on 17-1-1972, 20-1-72, 22-1-72 and again on 29-1-72, but no position could be obtained since Shri A.K. Dass dealing with DGS&D cases could not be contacted. However, the particulars of the order has been noted and needful will be done during the next visit to the firm.
22-1-1972:	
29-1-1972:	
29-1-1972:	
8-3-1972:	The firm have been visited very frequently but no position could be obtained. It is always understood that the dealing per son, Shri A.K. Dass, is not available and no other person can give the position and progress against DGS&D cases. In view of above, the firm's representative may be called for discussion for all the outstanding DGS&D cases, if desired.

REF: above.

The various visits to the firm by JFO has not yet produced any result. DP(D) may like to call for the firm's representative to discuss the contracts that they are holding. Firm is located at Delhi.

I have spoken to Shri Dass of M/s Auto Pins regarding supplies of A/Ts placed on the firm outstanding. He has informed me that he is leaving for Singapore and will be back by 16th/17th March. He will meet me in my office on 18th/19th March, then discussions will be held for supply.

- 28-3-1972: Contacted M/s Auto Pins over the phone and came to know that Mr. Dass has gone to Jabalpur and is expected within a day or two.
- 30-3-1972: Contacted M/s Auto Pins over phone at 2.20 P.M. and came to know that Mr. Dass has not yet returned from Jabalpur.
- 1-4-1972: Contacted the firm office on 1-4-72 at their K. Gate office. Mr. Dass is still away at Jabalpur. He is likely to be back by next week, as stated by the firm's representative (over phone).
- 10-4-1972: DP(D) spoke to Shri A.K. Dass regarding extension of delivery date.
- 1-5-1972 : The firm was lastly visited on 1-5-72 and contacted Shri A.K. Dass dealing with DGS&D cases. The firm stated that the prices of raw material for the stores against subject A/T have been very much increased and as such it is uneconomical for them to execute the subject A/T. Further it was understood from Shri A.K. Dass that they intend to approach 'P' for increase in the prices and also for extension in D/P within a week's time.
- 18-5-72: }
23-5-72: }
24-5-72: } Visited the firm on 18-5-72, 23-5-72 and 24-5-72 but nothing could be done since Shri A.K. Dass dealing with DGS&D cases was not available. However, the particulars of the order have been given to Shri Bhatia who has assured to get the needful done shortly.
- 20-10-72: Details not available.

APPENDIX V

(Vide para 3.28)

Copies of the Law Ministry's opinion of March 1973 and March 1974 regarding determining the date of breach of the contract.

The question for consideration is whether the A/T for the balance quantity could be cancelled at the risk and expense of the firm and what would be the date of breach.

2. The arrive at any conclusion, it is necessary to examine the facts of this case. The contract was placed on the firm for the supply of Shirting Angola Drab. The description of the stores was mentioned in clause 20 of the A/T. The terms of delivery were that the delivery would commence four months after receipt of import licence for wool and completion in six months thereafter. The assistance for import of 12,500 Kgs. of 64s quality wool at the rate of 250 grams per metre will be provided by the State Trading Corporation. There were no other terms or stipulations mentioned in the A/T. Incidentally, it is found that the firm, in the Schedule to the Tender at p. 10/c, has initially quoted that delivery will be completed in twelve months and will start after four months of the receipt of assistance, *i.e.* raw material 64s quality wool and dye stuffs. Subsequently the firm, *vide* their letter dated 8th January, 1970, withdrew the condition of an import licence of requisite dyes. It might perhaps be due to expectations that the requisite dye would be available in India locally. From p. 51/c, it appears that some meeting took place on 28-8-70 when the prospects of supplies in respect of all woollen and textile items required critically by D.G.O.F. were discussed. The minutes are not on record. However, it is mentioned the supplies were expected to start in December 1970 and that dye stuffs were neither available in the market nor can they be imported from abroad as they are banned for import. It was further mentioned that the matter had been taken up with D.G.T.D. who have advised that these dye stuffs were available with M/s. Sandoz India Ltd., Bombay, who were requested to confirm that they have the required dye stuffs so that the concerned firms may be requested to obtain their requirements from them. It is also evident from the letter of the firm at p. 53/c that the requisite dyes, which is a 'must' for dyeing the grey cloth for the said stores, were not available in the local market. From the Inspection report at p. 54/c, the first objection is regarding the shade of the samples and it is stated that the samples were darker in shade and do not fall within acceptable shade limit. In the letter addressed to the Junior Field Officer at p. 55/c, the D.G.S.&D., fully aware of the non-availability of dye stuffs elsewhere other than M/s. Sandoz India Pvt. Ltd. stated that the hold up of

manufacture of the stores due to non-availability of dye stuffs has since been solved in as much as M/s. Sandoz India Private Ltd., have been given an import licence for the import of raw material required for the manufacture of dyes. It implies therefrom that the imported dye stuff was required essentially for giving the proper colour to the stores required to be supplied. The Director General Ordnance Factories at p. 56/c has suggested to the Director General of Supplies and Disposals that the required dye stuffs should be made available to the firm. Again, *vide* letter at p. 57/c, the D.G.S.&D., asked the Junior Field Officer to contact the firm and intimated that the issue of import Licence for the import of raw material required for the supply of dye stuffs of M/s. Sandoz India Private Ltd. would have solved the problem the firm was facing and would have by now got the necessary dye stuffs for the production of the stores. It appears that the D.S. (Tex), Bombay, *vide* his letter dated 29-9-70, also approached M/s. Sandoz for dyes but M/s. Sandoz, *vide* their letter dated 17-11-70 had shown their inability to supply the required dyes. That would go to show that neither the import licence was issued to the suppliers for the import of the required dyes nor the dye was available locally. It appears that as a gesture of anxiety to supply the goods, the firm dyed the stores in the Indian dyes but the same have been rejected by the Inspectorate.

3. From the foregoing, it is clear that the Government was fully aware of the fact that for the supply of the stores of the specific description, imported dye stuff was essential and the same being a controlled item could not be available in the open market and had to be imported through some agency, in this case, through import licence issued to M/s. Sandoz Private Ltd. Therefore, the mere fact that the A/T does not stipulate any assistance for the imported dyes might not possibly absolve the Government from the assistance which ought to have been rendered in the circumstances of the case. Normally, when it was not otherwise possible to obtain the dye stuff from the local market the import licence, as requested by the firm, should have been issued to procure the same from abroad. The non-availability of the requisite dyes throughout the country seems undisputed except through one source, *i.e.* M/s. Sandoz Private Ltd., who have also expressed their inability to supply.

4. In other words, but for the supply of dye stuff through M/s. Sandoz, the contract might be considered impossible of performance within the meaning of section 56 of the Indian Contract Act. Treitel in the Law of Contracts, 22nd Edition, p. 608, has mentioned that an impossibility may be caused in several ways, one of them being unavailability, meaning thereby where a thing ceases to be available, the contract is discharged. In this connection, it may also be pointed out that the discharge may be by temporary unavailability of the thing. The Supreme Court has in *Satyavrat* 17LSS/77—3.

Ghosh case, (1954) SCR p. 310, clearly stated that second paragraph of section 56 of the Indian contract Act enunciates the law relating to discharge of contract by reason of supervening impossibility. It was further held that the word 'impossible' has not been used in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view and if an untoward even or change of circumstances totally upsets the very foundation upon which the parties based their bargain, it can very well be said that the promisor found it impossible to do the act which he promised to do.

5. From the facts discussed above, it may well be said that the difficulty in obtaining the requisite dye stuff was in contemplation of the Government which may or may not be in the difficulty, the firm initially quoted for the assistance of imported dye from the Government. The firm might have withdrawn this assistance under the expectation that the dye stuff may be procured from M/s. Sandoz, the only import licence holders for this requisite dye stuff. The D.S. (Textiles), Bombay's letter to M/s. Sandoz Private Ltd. for making available the requisite dye stuff to the firm concerned further confirms the difficulty faced by the suppliers. It may, therefore, well be said that the contract became impossible of performance within the meaning of section 56 on account of circumstances beyond the control of the suppliers or, in other words, the circumstances so changed that the performance of contract became impossible. In fact, impossibility and frustration are often used as interchangeable expressions.

6. Further extensions given by the D.G.S.&D. do not touch the fringe of the problem.

7. Under the circumstances, it is not sufficient to say that because A/T does not stipulate assistance for the imported dyes, the supplier would be liable for non-supply of stores. In fact it appears that he had requested for the import licence and the same has not been considered. It appears that out of the assistance rendered by the Government in supply of the raw material, certain stocks are lying manufactured with the suppliers; they were not found fit by the Inspector of Shirting and for scarves. The demand for scarves is still outstanding. Substantial foreign exchange is involved. Department may consider to accept the stock and utilize the same in the best possible manner it deems fit. It is doubtful whether under the circumstances of the case, the A/T could be cancelled at the risk and cost of the firm. If any doubt arises, this may be discussed with me.

Sd/-

S. K. BAHADUR, Deputy Legal Adviser

D.G.S.&D.

T. No. 38493/15-3-1973

The D/P fixed in the A/T was 14-3-1971 (49/c). D/P was extended from time to time and the last extension was upto 30-11-1973. From the Inspection Notes at Pages 319 and 320/c it is seen that the firm have acted upon this extension by tendering stores for inspection. If the contract has not been in any manner kept alive after 30-11-1973, the outstanding quantity under the A/T may be cancelled at the risk and cost of the firm treating 30-11-1973 as the date of breach.

Sd/-

P. K. KARTHA, Deputy Legal Adviser

19-3-1974

DGS&D

APPENDIX VI

(Vide para 3.36)

Detailed calculations of general damages of Rs. 21,280/-.

The total value of the cancelled quantity of 4,132.32 metres of Shirting Angola Drab taking into account Excise Duty and Sales Tax, etc. works out as under :—

Value of 14,132.32 metres @ Rs. 14.90 per metre	Rs.	2,10,571.57
(+) 5% Excise Duty—5% additional Excise duty	Rs.	21,057.16
(+) 20% Special Excise Duty on Basic Duty	Rs.	4,211.43
Total	Rs.	2,35,840.16
(+) 3% sales tax	Rs.	7,075.20
(+) Cess @ 1.90 per Sq. metre	Rs.	40,813.90
Grand Total value	Rs.	2,83,729.00
<i>i.e.</i>	Rs.	2,83,729.00

$$\begin{aligned} \text{General damages @ } 7\frac{1}{2}\% \text{ on Rs. 2,83,729/-} &= \frac{51}{2} \times \frac{1}{100} \times \frac{283729}{1} \\ &= \frac{851187}{40} \text{ i.e. Rs. 21,279.67} \end{aligned}$$

We may claim Rs. 21,280.00 as General Damages from the defaulted firm M/s. Model Woollen and Silk Mills, Amritsar, by issue of Demand Notice.

Value of A/T Rs. 7.45 lakhs.

Sd/-
A. K. GUPTA
5/9

Sd/-
A. T. ANIS
5/9

Sd/-
6-9-74

Sd/-
V. SUBRAMANIAN,
6-9-74

APPENDIX VII

Conclusions/Recommendations

Sl. No.	Para No. of the Report	Ministry/Deptt. Concerned	Conclusions/Recommendations
1	2	3	4
1.	1.48	Deptt. of Supply	<p>Against an order of 3000 outer flies of tents placed on M/s. N. K. Textiles Mills, Delhi in January, 1966 only 940 outer flies of tents were supplied by 15 December 1967 (500 Nos. within the delivery period, 400 Nos. by 30 September, 1966, another 25 Nos. by March 1967 and 15 by December 1967 respectively). Thereafter, no further supply was made by it although the period of delivery was extended from time to time upto 30 June, 1968. The balance quantity of 2060 Nos. was however cancelled in October 1968 at the risk and cost of the firm. On 30 October, 1968 order for 2060 outer flies of tents was placed on M/s. Bijli Cotton Mills, Hathras, a sister concern of M/s. N. K. Textiles Mills, Delhi at Rs. 870/- each. As however, the Acceptance of Tender was not in conformity with the tender of M/s. Bijli Cotton Mills, Hathras about arbitration, quantum of liquidated damages etc., the Acceptance of Tender was cancelled in June 1970 without financial repercussion.</p>

1	2	3	4
2.	1.49	Deptt. of Supply	<p>Subsequently, out of these 2060 tents, M/s. Sha Devichand Panmal, Jodhpur supplied 400 Nos. at Rs. 1297.50 each and another 1627 at Rs. 1435/- each by February, 1973 and the balance 33 Nos. were supplied by M/s. Mansukh Co. (Overseas), Faridabad in August 1973. The procurement of 2060 outer flies piecemeal at different points of time from different suppliers resulted in a payment of Rs. 11.07 lakhs more than what it would have cost at the rate of Rs. 871/- originally allowed to firm M/s. N. K. Textiles Mills, Delhi. There was no an unconscionable delay of 7 years in the supply of the outer flies of tents which otherwise were required to be supplied within 2½ months after placing of the order on 17 January, 1966. The way in which the matter has been dealt with in the DGS&D, indicates that there is something basically wrong in the system of indenting, selection of suppliers and the acceptance of tenders by the DGS&D which is entrusted with the responsibility of ensuring that urgent Government orders are executed in time without subjecting the Government to any loss due to slippages etc. on the part of suppliers. Some of the conspicuous short-comings which reflect adversely on the working of the DGS&D, are discussed in the following paragraphs.</p>
3.	1.50	Deptt. of Supply/ Min. of Defence	<p>The Committee note with surprise that although it was known to the DGS&D that the firm had the capacity to produce outer flies to the extent of Rs. 5 to 7 lakhs per month, they deliberately decided to enhance the initially proposed order of 2325 Nos. to 3000 Nos. without correspondingly increasing the period of delivery beyond 31 March, 1966, as initially fixed. That the assessment of the capacity of M/s. N. K. Textiles Mills,</p>

Delhi was not correctly made by the Defence Inspectorate is borne out by the subsequent performance of the firm. Despite grant of several extensions the firm could complete only 31 per cent (940 out of 3000 Nos.) of its contractual commitment and that too by December 1967. In fact, the DGS&D himself had observed in November 1966 that the firm had a capacity to produce only about 500 outer flies of tents per month and that the period of 2½ months originally allowed to it for supplying 3000 outer flies of tents was unrealistic. The Committee would like to know the various considerations and factors which weighed with the Defence Inspectorate in assessing the capacity of the firm to supply outer flies worth Rs. 5 to 7 lakhs per month.

4. 1.51 Do

The Committee are further perturbed to learn that as admitted by the Ministry of Defence in January 1976, the capacity verification of the firms was done on an *ad hoc* basis and on a limited scale as a comprehensive capacity verification of the firms as per normal practice was not possible within the short period. In this connection, the Committee would like to point out that according to the relevant provisions in Appendix VI of the DGS&D Manual, all aspects including existing load on the past suppliers, delivery offered, performance, technical competence, etc. are required to be examined in depth while considering the tenders. It is also required to be ensured that capacity reports are not called for haphazardly and in piecemeal and earlier capacity reports which are valid for a period of one year, are made full use of. It is evident from the facts that the placing of the order was rushed through without observing in entirety the specific provisions in the DGS&D Manual. The Committee would like the Ministry to investigate the reasons as to why DGS&D

had not taken care to satisfy itself about the firm's production capacity, existing load, technical competence etc. before placing an order on them. As this firm was said to be on the approved list of the DGS&D and was supplying various tentage items, the Ministry should also inquire whether the firm's earlier capacity reports were gone into before placing this huge order on them.

5. 1.52 Deptt. of Supply

Para 123 of the DGS&D Manual provides that "the formal Acceptance of Tender must issue as quickly as possible but in no case later than 5 days after the issue of Advance Acceptance." The Committee note that after issuing the advance Acceptance of Tender to M/s. N. K. Textiles Mills, Delhi on 30 December, 1965, the formal Acceptance Tender was issued after a lapse of 19 days, i.e. on 17 January, 1966. Similarly, an advice Acceptance Tender was placed on M/s. Sha Devchand Panmal, Jodhpur by telegram on 18 November, 1970. The firm waited for full one month after the issue of advance acceptance telegram before it wrote to DGS&D on 19 December, 1970 that in the absence of a formal Acceptance of Tender, it was not possible for them to offer stores. The Committee are unable to comprehend why even after receipt of this letter, no action was taken to issue the confirmatory Acceptance of Tender till 13 January, 1971. It is surprising that the DGS&D did not ensure the delivery of Acceptance of Tender to the firm which is stated to have telegraphically informed the DGS&D on 15 January, 1971 about the non-receipt of the Acceptance of Tender and asked for withdrawal of the order. The Ministry of law, to whom the matter was referred, had also opined that "it would not appear

to be possible to convince the Arbitrator or a Court of Law that the time of about two months taken in the issuance of the confirmatory Acceptance of Tender was a reasonable time. Having thus failed to fulfil its contractual obligations and having prevented the firm from taking steps to commence supplies, it would not be possible for DGS&D to take resort to the stipulation that the delivery was to commence 15 days after the receipt of formal Acceptance of Tender..... Considering all the facts and circumstances of the case, there would appear to be no reasonable chance of successfully enforcing the contract against the firm". The disquieting feature of this avoidable delay of about 2 months in the issuance of the confirmatory order was that this firm got a gratuitous benefit of extra payment of Rs. 2.28 lakhs against its offer of August 1970. The Committee consider this to be a fit case for a thorough probe with a view to fix responsibility. Government should also ensure that there was no collusion of officers with the firm which conferred on it extra financial benefits. Conclusive action may be taken to obviate recurrence of such costly lapses and the Committee informed.

83

6. 1 53 Deptt. of Supply

The Committee are further surprised to note that standby risk purchase tender enquiry was issued by the DGS&D in February 1967 when the extended delivery period granted to M/s. N. K. Textiles Mills, Delhi was yet to expire on 31 March, 1967. According to Para 180(i) of the DGS&D Manual "the buyer's right to effect to repurchase at the risk and cost of the seller arises only upon the breach of the contract by the seller. Hence the purchase officer should invite risk purchase tender only after the breach of the contract has occurred. In exceptional circumstances, however, where stores are most urgently required by the indentors and are not available

from ready stock but have to be manufactured and some public harm would be caused by the delay in supplies, standby tenders may be invited prior to the date of breach with a view to minimise the inconvenience that may be caused to the Government by the delay in performance of the contract". The Committee would like to know the reasons for departure in this case. If standby tender enquiry is issued in exceptional circumstances as envisaged above, the Committee would like Government to investigate as to why the risk purchase was not effected and instead further extension was granted to this firm beyond 31 March, 1967 to 31 December, 1967 etc. even when it was clear from the firm's poor performance that it was incapable of meeting in time the contractual obligations. Had the DGS&D shown prudence expected of him, they would have saved an infructuous expenditure of Rs. 5,31,480 being the amount recoverable from this firm on account of the difference in risk purchase offer and original price allowed to it for the balance quantity of 2060 outer flies apart from an earlier delivery of stores at least by three years.

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7.

1.54

Deptt. of Supply

Again, a standby limited tender enquiry was issued on 22 July, 1968 for effecting risk purchase. Para 180(ii) of the DGS&D Manual prescribes that "if it is considered to place risk purchase contracts on the basis of standby tenders for special reasons, approval of the Department of Supply should be obtained since placement of order on the basis of standby tender would prejudice the right of the Government to recover extra expenditure incurred in risk purchase." The Committee have not been informed whether the approval of the Department of Supply was obtained before floating

standby tender enquiries in the above two cases. The Committee would therefore seek a specific clarification of this aspect.

8. 1.55 -Do -

The Committee note that as a result of the standby limited enquiry an order for supply of 2060 outer flies was placed on M/s. Bijli Cotton Mills, Hathras a sister firm of M/s. N. K. Textiles Mills, Delhi on 30 October, 1968 but no supply was made by it. Since the acceptance of tender placed on the firm was not in conformity with its tender about arbitration-quantum of liquidated damages etc., no action could be taken against it and the acceptance of tender was cancelled after an expiry of 20 months in June, 1970 without financial repercussion on either side.

9. 1.56 —Do—

It has been laid down in Para 180(b) of the DGS&D Manual that "risk purchase contract should be on the same terms (apart from the delivery date) as the original contract i.e., the goods should be of the same specification and liable to inspection by the same authority and the terms of payment, provision regarding liquidated damages, arbitration, etc. should be the same". The Department of Supply have also conceded that "there appears to have been an error in this case and responsibility is being fixed". The Committee would like to be apprised of the action taken in the matter.

10. 1.57 Deptt. of Supply/
Min. of Defence

Yet another deplorable feature of the case is that the recovery of pre-estimated damages for delay in supplies to the tune of Rs. 7,850 had to be waived as there were delays in inspection of the stores. It would be recalled that Para 409 of the DGS&D Manual stipulated that "inspection should commence within one week of supplier's request irrespective of the value of the stores offered for inspection and location of supplies and should be completed as early as possible". The Committee stress that the reasons

for delay in inspection of the stores may be investigated with a view to fix responsibility and to take remedial measures for future.

11. 1.58 Deptt. of Supply

The Committee are constrained to learn that the aspect and likelihood of M/s. N. K. Textiles Mills, Delhi trying to pre-empt the efforts of DGS&D was not examined while accepting the offer of M/s. Bijli Cotton Mills, Hathras a sister concern of the former firm at Rs. 870 per outer fly in August, 1968. The Committee would like to know the reasons as to how this important aspect was lost sight of, particularly in view of the fact that the orders had been placed earlier on M/s. N. K. Textiles Mills, Delhi at the rate of Rs. 871 per outer fly and the lowest offer received earlier in response to the risk purchase tender enquiry in February, 1967 were as high as Rs. 1129 from M/s. Atma Ram Suri & Sons, Delhi and Rs. 1130 from M/s. N. K. Textiles Mills, Delhi. It is rather intriguing that M/s. N. K. Textiles Mills, Delhi on whom the order was initially placed for the supply of outer flies had in the contract undertaken to make supplies F.O.R. Hathras. The firm's sister concern, viz., M/s. Bijli Cotton Mills, Hathras was also located at Hathras. The Committee strongly suspect that after this firm had failed in their contractual obligations, their own associate, viz., M/s. Bijli Cotton Mills, Hathras came forward through another door to supply the outer flies of tents. Government should enquire whether any action could be taken to stop the practice whereby when one firm fails in the contractual obligations another associate of the same firm comes through another door with a view to bale out the parent firm and also extract a much higher price.

12 1.59 —do—

The Committee are concerned to note that the supply of 3000 outer flies was to be completed by 31 March, 1966 whereas M/s. N. K. Textiles Mills, Delhi had supplied only 500 Nos. by that date. The delivery period had been extended in June 1966 upto 30 September, 1966, then in December 1966 upto January 1967 and again in February 1967 upto March 1967, but the firm had offered only 400 Nos. more upto September 1966 and another 25 Nos. thereafter. According to the Department of Supply these extensions were granted on account of non-availability of material used for manufacture of the item, particularly turpentine oil and other chemicals. What has surprised the Committee is the fact that this plea of the firm was not examined by the Department in detail so as to check its veracity. It is inexplicable that extensions were granted rather liberally even after the expiry of the contractual period notwithstanding the poor performance of this firm *ab initio*. The Acceptance of Tender should have been cancelled at firm's risk and cost in time. The failure to take timely action needs to be investigated.

13 1.60 —do—

The Committee are unable to understand as to why DGS&D had placed orders on M/s. Sha Devichand Panmal, Jodhpur in April, 1971 at the rate of Rs. 1297.50 each for 400 outer flies and at Rs. 1435/- each for 1660 more in June 1971 on the basis of the firm's earlier offer of 25 March, 1971 when the Acceptance of Tender placed on it on that very basis earlier was cancelled in May 1971 itself. They would also like to know whether any separate tender was floated for purchasing 1660 outer flies of tents at the rate of Rs. 1435/- each and if not, the reasons therefor.

14 1.61 —do—

The Committee note that a demand for recovery of Rs. 3,552/- recoverable as general damages was sent to this firm on 11 December, 1973.

1	2	3	4
			and the amount has still not been recovered. According to the information given to the Committee on 31 December, 1976, the case has been referred to Arbitration. The Committee would like to be informed in due course the decisions of Arbitration in this regard.
15	1.62	Deptt. of Supply/ Min. of Defence	Outer flies of tents constitute an important item for Defence purposes. From the transactions relating to the purchase of tents, the Committee gather the impression that capacity within the country is not fully geared to meet urgent Defence requirements. Government may take note of the present deficiencies in this regard and take suitable remedial measures and inform the Committee of the concrete action taken in this behalf.
16	2.37	Deptt. of Supply	From the facts disclosed in the Audit para and the material made available to them the Committee have come to the inescapable conclusion that Government by their own inaction and lack of proper control over the performance of a contracting firm have had to incur a substantial loss of Rs. 4.55 lakhs apart from the inconvenience caused to an indenting Defence Department due to the inexcusable delay of about 5 years in obtaining the goods indented for. The transaction relating to the purchase of assembly springs reveals gross violation of existing rules and give rise to suspicious regarding undue favours shown to the supplier. The fact emerging from the case are discussed in the following paragraphs.
17	2.38	Deptt. of Supply/ Min. of Defence	According to the Audit paragraph, the DGS&D had placed an order on firm M/s. Auto Pins (India) Regd., Delhi on 28 July, 1969 for the supply of 2000 front assembly springs at the rate of Rs. 40/- each and 3000 rear assembly springs (subsequently increased to 3600 on 9 October,

1969) at the rate of Rs. 60/- each for supply to the Commandant, C.O.D. Delhi Cantonment. According to the terms and conditions of the Accepted Tender, before commencement of bulk production, samples were to be submitted to the Inspector of Vehicles, Delhi within 60 days from the date of placement of A/T. i.e. by 26 September, 1969. The Committee regret to find that though the firm had requested on 15 August, 1969 for certain deviations in specifications, the request for deviations was rejected by the Inspector of Vehicles, Delhi after a lapse of 2½ months, on 27 October, 1969. This had the effect of keeping the contract alive beyond 26 September, 1969. What has further surprised the Committee is the fact that the deviations in specifications sought for again by the firm on 17 November, 1969 were agreed to by the Inspector of Vehicles, Delhi on 28 November, 1969, who surprisingly enough, also enquired from DGS&D whether pilot samples could be inspected. In this connection, it would be relevant to mention that Para 424 of the DGS&D Manual lays down that "Inspecting Officers have no authority to pass stores not exactly in accordance with the terms of the order. When firms are unable to supply stores in accordance with the samples or specifications, the matter should be referred to the Supply Officer who will if necessary, refer to the Indenting authority, before deciding that the substitutes offered by the suppliers may be accepted."

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2.39

—do—

This being the position, the Committee are unable to understand the over-zealous generosity of the Inspector in entertaining firm's request for deviations in specifications without referring the matter to DGS&D or seeking their concurrence to it. In fact, the Department of Supply have informed the Committee that the DGS&D came to know of it only in October/November 1969.

19 2.40 Deptt. of Supply/
Min. of Defence

It is patently clear that staggering of inspection of the pilot samples beyond the stipulated period resulted in refixation of delivery period giving little or no time to the Government to claim for liquidated damages. The considerations that weighed with the Inspector to agree to the deviations, which had been rejected by him earlier are not clear. The Committee would therefore like the Government to probe into the matter thoroughly.

20 2.41 —do—

The Committee are further unhappy that it took the authorities about 2 months to approve the samples as they find that these were received on 7 January 1970 and approved on 5 March 1970. Again, although according to the revised delivery period the supplies were to be completed by 5 July 1970, the firm sought on 4 August 1970, an extension of delivery period for a further period of 3 months from the date of receipt of their letter. What has distressed the Committee more is the fact that instead of taking decision as per the provisions in the DGS&D Manual, within 7 days of the receipt of the request or within 7 days of the receipt of reply from the Indentor, if a reference was made to them, the extension was granted on 26 September 1970 for a period of 3 months upto 31 December 1970. The extension was granted in spite of the fact that the Inspector had informed the DGS&D on 29 July 1970 that the material test report of spring leaves received from Inspector of Metals, Muradnagar had indicated that the spring leaves did not conform to S. N. 45A as required. The Committee are unable to appreciate the reasons which compelled the Government firstly to entertain the request for extension after the expiry of originally stipulated delivery period and then to grant them

liberal extension upto 31 December 1970, which if counted from the date of expiry of delivery period on 5 July 1970 comes to about 6 months. The Committee have been informed that upto 31 December 1970, the firm offered a paltry 800 front assembly springs for inspection on 26 December 1970, against the order for 2000 springs.

21 2.42 Deptt. of Supply

Yet another disquieting feature of the case is that since the firm made no supplies after the expiry of the delivery period on 31 December, 1970, the representatives of DGS&D contacted the firm, albeit without success, as many as 18 times between February 1971 and May 1972. The frequent visits of the DGS&D representatives to firm's premises give rise to serious suspicions. The reports sent by the DGS&D staff were conflicting and could hardly be relied upon. While some reports of the DGS&D staff indicated that the firm was not interested in making the supplies, others indicated that the firm intended to apply for extension. Some of the reports also indicated that the firm also intended for increase in price. The Department of Supply have informed the Committee that instead of cancelling the contract the firm was being contacted through Progress Wing to apply for extension as the stores were needed by the Indentor. The Committee find it hard to appreciate this unusual course adopted by DGS&D in repeatedly contacting the firm for seeking extension when, according to the rules it was bound either to adhere to the contractual obligations or face the consequences of default. The Committee would like to know the level at which the reports submitted by the representatives of the DGS&D were disposed of in that office and whether the prescribed procedure was followed in this regard.

16

22 2.43 —do—

The Committee are surprised to note that even though there were no prospects of resuming the supply, DGS&D agreed on 6 December, 1972 to

the firm's offer submitted on 24 October 1972, i.e., 24 months after the expiry of delivery period, for commencement of delivery five months later, i.e. from April 1973 and completion of supply of the outstanding quantity in one year by March 1974. This was agreed to despite the fact that the DGS&D were aware of the heavy increase in the price of assembly springs as the rates quoted against another tender in October 1972 were 79 to 94 per cent higher than the rates allowed to the firm in July 1969. It is regrettable that DGS&D acted in violation of the provisions of para 179 of DGS&D Manual which lays down that the purchase officer should keep a careful watch on the date of delivery, keep himself fully informed as to what supplies have been made, what supplies are likely to be made by the date of delivery and what in general are the prospects of the contractor performing the contract. Where delivery is specified in instalments, he should wherever he is satisfied that performance is not likely to be forthcoming, cancel the instalments in default and call upon the contractor to execute the remaining part of the contract. In other cases (i.e. contracts stipulating delivery in one lot) where he considers it more expedient and is satisfied that performance is not likely to be forthcoming at all, he should cancel the entire contract of the quantity outstanding as on the date of delivery period. All this devious and dubious tactics adopted by the DGS&D give rise to a grave suspicion that there was some sort of collusion between the DGS&D staff and the firm with a view to enabling the latter to pocket gratuitous pecuniary benefits. The Committee would therefore reiterate that a high level enquiry should be conducted in the case with a view to fixing responsibility.

In this connection, the Committee would like to point out that Para 177 of Chapter V of the DGS&D Manual provides that "if the contractor fails to deliver the stores or any instalment thereof within the period fixed for such delivery or at any time repudiates the contract before the expiry of such period, the Government is entitled to cancel the contract and to repurchase the stores not delivered at the risk and cost of the defaulting contractor. In the event of such a risk purchase, the defaulting contractor shall be liable for any loss which the Government may sustain on that account provided the purchase, or if there is an agreement to purchase, such agreement is made, in case of default to deliver the stores by the stipulated Delivery Period, within six months from the date of such default and in case of repudiation of the contract before the expiry of the aforesaid delivery, within six months from the date of cancellation of the contract." From the information furnished to the Committee, it is quite clear that DGS&D had deviated from the prescribed procedure in extending the delivery period on the terms dictated by M/s. Auto Pins (India) Regd., Delhi. Due to this initial lapse it appears DGS&D became helpless thereafter as there was no other alternative left with them except to keep the contract binding on the firm since the A/T was not cancelled within the stipulated delivery period and it was not possible to effect risk and purchase which could be made within six months from the date of cancellation of the contract. The apprehensions of the Committee are further strengthened from the reply given by the Department of Supply that "when the firm had in writing asked for extension and promised to make supplies, it was considered prudent to give the extension and keep the contract binding on the firm, especially when the initial possibility of cancellation of contract had not been availed of." Since the firm did not honour their commitment for supplies even after the extended schedule, the con-

tract was cancelled on 15 May 1974, after consulting the Ministry of Law, at the risk and cost of the firm indicating the date of Breach as 31 March 1974.

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2.45

Deptt. of Supply

The Committee note that for making the risk purchase, a limited enquiry was issued on 17 June 1974 for 1200 front assembly springs and 3600 rear assembly springs. Of the four offers received, the offers of M/s. Racmann Springs Pvt. Ltd., M/s. Murarka Engineering Works and M/s. Metropolitan Springs Pvt. Ltd. New Delhi were rejected. The next offer was from M/s. Jamna Auto Industries, Yamunanagar which quoted Rs. 170 for a front assembly spring and Rs. 235 for a rear assembly spring. The Committee are deeply concerned to note that while requesting the indenter on 18 July 1974 for confirmation of additional funds at the rates quoted by M/s. Jamna Auto Industries, Yamunanagar, the DGS&D failed to inform the Indenter of the vital fact that the risk purchase in the case of M/s. Auto Pins (India) Regd., Delhi was to be effected by 30 September 1974. The intimation regarding provision of additional funds was sent by the Army Headquarters on 31 October 1974 i.e., one month after the expiry of the last date for valid risk purchase. The Ministry of Defence have stated that "if the DGS&D had informed the indenter about the firm date by which confirmation should be received for effecting risk purchase, things could have been expedited with operational urgency." On the other hand, the Department of Supply have informed the Committee that "as per Office Order No. 102 dated 1-2-1974, even for ordinary indent of Defence a period of 6 weeks is to be allowed to the indenter to enable

him to provide funds. As against this, the indentor had a period of more than 2 months to make available the requisite funds... The question relating to provision of additional funds had been constantly chased by DGS&D *vide* letters dated 1-8-74, 27-8-1974, telegrams dated 4-9-1974 and 13-9-1974. The indentor was clearly told on 27-8-1974 that the funds must be conveyed latest by 2-9-1974 so that the risk purchase could be effected in time. Again on 4-9-1974, he was clearly told that this was a risk purchase case and offers were valid till 12-9-1974." From the explanations offered it becomes abundantly clear that there were lapses galore on the part of both the sides. To obviate recurrences of such costly mistakes, the Committee would stress the need for setting up a suitable coordinating machinery. The Committee would like to be informed about the decisions taken in the matter.

25 2.46 —do—

The Committee find that the indentor was informed on 12 September 1974 by the DGS&D that valid risk purchase was not possible because the acceptance offer from M/s. Jamna Auto Industries, Yamunanagar was subject to deviations and only general damages would be recoverable from M/s. Auto Pins (India) Regd., Delhi. What has disturbed the Committee is the fact that the DGS&D failed to consult the Ministry of Law before arriving at this decision.

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26 2.47 —do—

The Committee also note that before providing additional funds, the indentor reduced the requirement of rear assembly springs from 3600 to 2600 and withdrew demand for front assembly springs. The Department of Supply stated that against 5 more contracts outstanding against M/s. Auto-Pins (India) Regd., Delhi (September 1975) the firm had completed supplies in three cases, whereas the remaining two contracts were cancelled



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			<p>at firm's risk and purchase as they had failed to complete the supplies even after giving extensions. The outstanding stores were either not required by the indenter or were purchased at lower rates. It has been laid down in Para 190 of the DGS&D Manual that "in cases where no repurchase is made after cancellation of the contract either due to withdrawal or reduction in demand by the Indenter, Government can recover only the general damages." The Committee would like to be informed whether the general damages were also recovered from this firm in the above two cases in which no repurchase was made.</p>
27	2.48	Deptt. of Supply	<p>The Committee find that the general damages recoverable from M/s. Auto Pins (India) Regd., Delhi have been assessed as Rs. 2,83,712 for which demand notice was issued to the defaulting firm on 3 January 1976. Upon its failure to deposit the amount and its request to refer the dispute for arbitration, Arbitrator has been appointed on 2 June 1976. The Committee would like to know the latest position of the recovery.</p>
28	3.38	—do—	<p>The Audit paragraph has revealed yet another case in which Government had to incur an additional expenditure, apart from the delay of 3 to 8 years, in the procurement of drab Angola shirting for an indenter of Defence Department on account of ambiguous conditions incorporated in the contract and delays in effecting risk purchase by DGS&D. The facts of the case are discussed in the following paragraphs.</p>
29	3.39	—do—	<p>According to the Audit Paragraph an order by DGS&D for supply of 1,36,750 metres of drab Angola shirting of 76 centimetres width at the</p>

rate of Rs. 5.28 per metre was placed on M/s. Punjab Woollen Textile Mills, Chheharta on 27 July, 1966 against an indent dated 23 March, 1966 from the Defence Department. One of the terms and conditions of the contract provided that supply would commence after one month from the date of receipt of the wool tops by the firm and would be completed in 3-1/2 months thereafter. The firm did not make any supply, as the increase in price demanded by it in June 1967 on account of increase of excise duty and high price of imported wool tops, was not allowed. The contract was, therefore, cancelled in June 1969. As the DGS&D was not able to ascertain the date on which the firm received the wool tops, the exact date of breach of the contract could not be determined and thus risk purchase against the firm was not effected. The Department of Supply have stated in this connection that 'it was not unusual to link the period of delivery with respect to the date or receipt of wool tops' and that the firm was expected to intimate the date of receipt of wool tops to enable the purchaser to refix the delivery date. In the opinion of the Committee, the terms and conditions of the contract given to this firm, viz. that the supply would commence after one month from the date of receipt of the imported wool tops and would be completed within 3½ months thereafter contained obvious lacunae which enabled the firm to escape the general damages for Rs. 3.15 lakhs. The Committee desire that the terms and conditions of such contracts should be revised, if necessary, after obtaining legal advice in order to see that these do not suffer from lacunae.

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30 3.40 Deptt. of Supply/Min. of Def.

The Committee regret to note that DGS&D after writing a letter on 25 November, 1966 to the Junior Field Officer, Ludhiana, asking him to find out from the firm the prospects of receipt of raw material, took 11 months

to remind him. It is all the more regrettable that the DGS&D after issuing the A/T in July 1966, handled the matter in a slipshod manner till 28 March, 1967 when a telex was sent to the Textile Commissioner for issuing the instructions to Indian Wool Mills Federation for release of 58 S wool tops to the firm. Again no serious attempt was made by the Department of Supply/DGS&D to find out the actual date of receipt of the raw material by the firm. The result of failure on this account has been that the date for delivery of goods by the firm could not be fixed and the contract ultimately had to be cancelled without risk purchase. The Committee feel that this situation could have been averted had the DGS&D ascertained from the firm's stock register and from other available sources the actual date of receipt of the raw material. To obviate such a situation DGS&D should have made this condition of intimating the date of receipt of raw material obligatory on the part of the firm in the terms of the contract. Also matter should have been followed up with authorities concerned to ensure timely supplies of the material and of the quality required. The Committee would in the circumstances of the case, urge upon the Ministry to investigate the reasons for the lapse in this case with a view to fixing responsibility.

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31. 3.41

Deptt. of Supply

Further, the Committee have their own doubts about the *bona fides* of the firm as they feel that the firm deliberately and purposefully suppressed the date of receipt of imported raw material in order to derive maximum advantages on account of escalation of prices, etc. It is also not clear to the Committee as to how the material which was imported/allocated specifically for Defence Supplies was actually used.

32. 3.42 ---do--- It should have been possible for Government to deal with the matter conclusively instead of allowing the firm to get away with the raw material without meeting the contractual obligation.
33. 3.43 ---do--- The Committee observe further that the firm had informed DGS&D on 1 February, 1968 that the raw material had been supplied to them after more than a year and would, therefore, like to know whether this fact was brought to the notice of Ministry of Law while referring the case to them for effecting risk purchase against M/s. Punjab Woollen Textile Mills, Chheharta.
34. 3.44 ---do--- The Committee find that M/s. Vohra Textile Mills, Amritsar on whom the contract for supply of 18,375 metres of Angola Shirting was placed completed the supply whereas M/s. Model Woollen & Silk Mills, Verka could supply 4906.75 metres according to specification and 28311.40 metres with price reduction ranging from 7 to 10 per cent against the order of 50,000 metres of Angola shirting upto January 1972. M/s. Model Woollen & Silk Mills, Verka offered another 18000 metres in August, 1972 but the stores were not accepted by the Inspector of Defence Department due to use of sub-standard dyes. This firm had stated, in this connection, that it had applied for licence for importing standard dyes and as licence was not granted, it had to use whatever sub-standard dye was available. In response to an enquiry the Indentor had, in October 1972, informed the DGS&D that he would be in a position to make use of the sub-standard material offered by the firm and asked them to accept the material upto the quantities required by them. However, against the Indentor's requirements of 24254 metres of such sub-standard Angola shirting for scarves and

lining 1473 metres for scarves at 10 per cent and 1177 metres for lining at 12½ per cent price reduction were accepted in November, 1973. The remaining quantity was, as stated by the Department of Supply, 'not even suitable for the lining material and could not be accepted.' It is not clear to the Committee as to why only this firm had difficulty about dye particularly when the other firm viz. M/s. Vohera Textile Mills, Amritsar was able to deliver goods as per specifications.

35. 3.45

Deptt. of Supply

The Committee are surprised to note that after a limited tender enquiry was issued on 6 April 1974 for effecting risk purchase of Angola shirting according to specification the DGS&D enquired from the Indentor on 3 May 1974 i.e. whether sub-standard or specification Angola shirting was needed. Even at this stage the Indentor was not specifically informed that the risk purchase was to be completed by 29 May 1974. The Committee take a very serious view for this lapse on the part of the purchase officer as it had cost the Government exchequer an extra expenditure of Rs. 3.26 lakhs in the purchase of 14,132 metres of Angola shirting from M/s. Modella Textile Industries Ltd., Bombay at the rate of Rs. 38 per metre instead of purchasing it from M/s. Model Woollen & Silk Mills, Verka at the rate of Rs. 14.90 per metre. The Committee would like that the responsibility for the lapse should be fixed. The Committee would also urge that Government may devise a fool proof method so that such costly lapses do not recur.

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36. 3.46

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The Committee would also like to be informed of the latest position regarding recovery of Rs. 21,280 being the general damages, from M/s. Model Woollen & Silk Mills, Verka.

37. 4.19 Deptt. of Supply

The Audit Para reveals how on account of the failure on the part of a supplier to supply 13 tonnes of gun metal ingots at the rate of Rs. 13.25 per kg., Government had to incur an extra expenditure of Rs. 2 lakhs by farming out the contract to another firm at a higher price. The facts of the case and the observations of the Committee are given in the following paragraphs.

38. 4.20 —do—

The Committee are unhappy to note that on the request for extension of one month's time made by the firm on 20 September, 1972, i.e. 20 days after the stipulated delivery period, followed by another request made on 12 October, 1972, the delivery period was extended by the DGS&D only on 25 November, 1972 i.e. about three months after the stipulated delivery date viz. 31 August, 1972. According to the prescribed procedure extension in the date of delivery is to be granted within 7 days in such cases. The Committee are not at all satisfied with the explanation that has been given to the Committee for the delay of two months viz. "the necessary file was submitted by the dealing Assistant on 13 November, 1972". This only indicates an utter lack of supervisory control over the staff in DGS&D. The Committee are surprised further to learn that while asking for extensions of date of delivery, no specific grounds were indicated by the firm and the DGS&D had not even cared to enquire into the reasons for extension in this case in spite of the fact that the period of one month for which the firm sought extension had already expired on 25 November, 1972 i.e. the date on which the amendment letter extending the date of delivery upto 31 December 1972 was issued. This had virtually resulted in extension of four months delivery period instead of one month applied for by the firm. Though the Department have informed the Committee

that action is being taken against those responsible for the delay, the Committee would like to be informed of the nature of action taken on the defaulting officials. Government should ensure that there was no collusion between the firm and the DGS&D officials in this particular case. The Committee would also like that instructions should be issued to all concerned to ensure strict observance of the prescribed procedure in granting extensions in the date of delivery failing which they will be liable to administrative and disciplinary action.

39. 4.21

Deptt. of Supply

The Committee further regret to note that knowing fully the earlier failure of M/s. Metal Smelting & Engineering Works, Calcutta to deliver the goods, DGS&D placed an advance acceptance of tender on 25 April, 1973 subject to the condition that it should furnish the security deposit within 15 days of the formal acceptance of tender which was issued on 3 May, 1973. As the firm neither furnished any security nor did it supply any stores, the A/T was cancelled on 3 November, 1973. The Committee take a very serious view of the placement of order on this defaulting firm in contravention of the rules which provide that "in the event of failure of the firm to furnish the security deposit by the specified date, their offer may be ignored and placement of the contract of the next best offer considered". The Department of Supply have, in this connection, stated that 'the circumstances in which the order was placed without obtaining security deposit are under investigation and explanations of the concerned officials have been called for'. The Committee would like to know the outcome of investigation and the further action

taken against the persons found responsible as also the remedial measures taken to obviate such lapses in future.

40. 4.22 —do— The Committee would further like the Government to enquire as to why the DGS&D had not cancelled the contract immediately when the firm failed to fulfil their contractual obligations in depositing the security by the 21 May, 1973 as provided in the A/T instead of cancelling it 5½ months thereafter on 3 November, 1973.
41. 4.23 —do— According to Audit Paragraph this firm offered to supply against the risk purchase enquiry 50 per cent of the quantity within 30 days from the date of formal acceptance of tender and the balance within 30 days from the date of first supply. The Committee is unable to understand as to why the firm was allowed a period of 3 months to complete the supplies by 10 August, 1973 against their offer of 2 months.
42. 4.24 —do— The Committee are constrained to point out that this case has been handled in DGS&D in a most casual and perfunctory manner. It has been explained by the Department of Supply in October 1975 that 'the risk purchase A/T was placed on the defaulting firm keeping in view of the fact that they had already manufactured 50 per cent of the goods'. The progress wing at Calcutta had also intimated in their letter of 25 January, 1973 that it had been reported to them that a portion of the quantity ordered was lying ready for inspection. Surprisingly enough, the Progress Wing at Calcutta did not satisfy itself of the genuineness of the report submitted to it before writing to the DGS&D. Even the DGS&D, it appears, did not verify whether the firm had actually manufactured 50 per cent of the goods before placing the risk purchase A/T on this firm.
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			The Committee desire that necessary action should be initiated forthwith to bring to book officers found responsible on this account.
43.	4.25	Deptt. of Supply	The Committee note that a demand for Rs. 2.25 lakhs, being the difference between the price payable to M/s. Metal Smelting & Engineering Works, Calcutta and the price at which the gun metal ingots were subsequently purchased from M/s. Commercial Metal Corporation, Calcutta (vide para 4.16 above) in May 1974, was raised against the firm on 24 April, 1974. The Department of Supply have informed the Committee on 14 December, 1976 that "the case has already been referred to arbitration for recovery of the extra expenditure. The Arbitrator was appointed on 10 May, 1976. The Government has submitted its claim before the Arbitrator". The Committee would like to know in due course the progress made in the matter.

