

PUBLIC ACCOUNTS COMMITTEE (1978-79)

(SIXTH LOK SABHA)

HUNDRED AND THIRTY-SEVENTH REPORT

DEFENCE SERVICES

MINISTRY OF DEFENCE

[Paragraph 43 of the Report of the Comptroller and Auditor General of India for the year 1976-77, Union Government (Defence Services) relating to Purchase Contracts in two Commands]



Presented in Lok Sabha on the 30th April, 1979

Laid in Rajya Sabha on the 30th April, 1979

**LOK SABHA SECRETARIAT
NEW DELHI**

April, 1979/Vaisakha, 1901 (S)

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CORRIGENDA TO 137TH REPORT OF THE PUBLIC ACCOUNTS
COMMITTEE (SIXTH LOK SABHA).

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*PART II

Minutes of the sittings held on

26.10.1978 (F.N.)

8.12.1978 (A.N.)

25.4.1979 (A.N.)

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

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(1978-79)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Hundred and Thirty-seventh Report of the Public Accounts Committee (Sixth Lok Sabha) on Paragraph 43 of the Report of the Comptroller and Auditor General of India for the year 1976-77, Union Government (Defence Services) relating to Purchase Contracts in two Commands.

2. The Report of the Comptroller and Auditor General of India for the year 1976-77, Union Government (Defence Services) was laid on the Table of the House on 6th May, 1978. The Public Accounts Committee examined this paragraph at their sittings held on 26th October and 8th December, 1978 and considered and finalised this Report at their sitting held on 25th April, 1979.

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

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

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

NEW DELHI;
April 25, 1979

Vaisakha 5, 1901 (S).

P. V. NARASIMHA RAO,
Chairman,
Public Accounts Committee.

REPORT

PURCHASE CONTRACTS IN TWO COMMANDS

1. Mode of Purchase by Supply Depots

1.1. The role of the Army Service Corps includes provisioning, receiving, holding, maintaining, transporting, issuing and accounting of all items of supplies and petroleum, oils and lubricants for the Armed Forces. Supplies are arranged through central purchase, local contract and local purchase. The main central purchases comprise rice, atta, dal, sugar, oil, coal and petroleum products and are arranged centrally by the Army Headquarters (HQ) through various Central purchase organisations.

1.2. Local contracts for supplies consist of all fresh food articles (vegetables, fruits, meat etc.), firewood and char coal, action for which is initiated by Sub-Area/Area HQ. Contracts are concluded by the competent financial authorities ranging from Sub-Area Commander to the Quarter Master General (QMG). The powers of the QMG are subject to the concurrence of the Ministry of Finance (Defence) (above Rs. 10 lakhs and upto Rs. 25 lakhs) and Government (above Rs. 25 lakhs). The authority initiating action forwards all tenders received, with its recommendations, to the Controller of Defence. Accounts (CDA) of the Command for scrutiny in his capacity as Financial Adviser, after which these are forwarded to the sanctioning authority. If the latter does not accept the opinion of the CDA, reasons are to be recorded on the comparative statement of tenders.

1.3. Local purchases are to be resorted to when supplies from normal sources are not available or when demands are very small.

COMMAND I

II. Review of Meat Contracts

1.4. Among the local contracts administered by the Supply Depots, those for supply of meat form the highest in value. The value of purchases of meat by the Supply Depots in Command I during the last 5 years, as indicated by the CDA, was as follows:

Year	Value of purchases made
	(Rs. in crores)
1972-73	2.55
1973-74	2.13
1974-75	5.17
1975-76	3.13
1976-77	4.04

(a) *Arbitration Cases Decided in 1976-77*

1.5. Until 1971, while inviting tenders for supply of meat, quotations were called for separately for 'meat fresh' and certain specified items of 'edible offals'. From 1971, in the Command a change was made in the schedule to the tender. The contractors were invited to specify rates in two parts; Part I for 'meat fresh' and specified 'edible offals' separately, and Part II for 'meat fresh including edible offals'. Although in Part II, the rate for meat was inclusive of edible offals, there was a clause in the special conditions to the contract which provided that 'edible offals such as kidneys, liver, tongue, brain and sweet bread if required will be taken over for issue at the rate of meat fresh'. The change in the schedule to the tender and its effect on the special conditions were not referred to the legal authorities, though required under the rules, but the CDA had been consulted in the matter. Contracts for meat from 1971-72 onwards were concluded and administered under this pattern.

1.6. Two contracts (value: Rs. 9.41 lakhs and Rs. 22.65 lakhs) for supply of meat during 1973-74 to two Supply Depots Nos. 1 and 2 were awarded to contractor 'A' who had quoted rates in Part II—meat fresh including edible offals. (The contractor did not quote for Part I of the tender). Soon after the commencement of the contract, the contractor repeatedly represented to the Sub-Area HQ that the depots were not accepting edible offals 'which they were required to do under the accepted contract' and that he was suffering considerable loss. The contractor was informed in June 1973 by the Sub-Area HQ that edible offals would be taken only if required as per the special conditions of the contract. Meanwhile, the shortfall in the supply of meat (as a result of not accepting offals offered in lieu of meat) was made up by local purchase of authorised substitutes during November 1973—March 1974 at the risk and expense of the contractor at an extra expenditure of Rs. 1.32 lakhs for both the depots. In January, 1974, the contractor requested that an arbitrator be appointed to settle the dispute under the provisions of the contract. The position in respect of the two contracts is indicated below:

Supply Depot No. 1

1.7. In January 1974, the contractor filed an application in a Court of Law for stay of recovery of extra expenditure or of withholding of payment of bills and also for issue of directive for the appointment of an arbitrator in pursuance of one of the conditions of the contract or for the appointment of an arbitrator by the Court itself.

1.8. In April 1974, the Army HQ submitted to the Court that the contract was being operated correctly in accordance with the special

conditions of the contract and that edible offals were to be taken only if and when required; it had, however, no objection to refer the disputes to arbitration.

1.9. The Court held (August 1974) that since the parties had agreed to refer the case to arbitration no recovery should be made from the bills till adjudication of the case. In the meantime (May 1974), the QMG appointed the Sub-Area Commander as the arbitrator.

1.10. The contractor in his claim before the arbitrator (July 1974) made the following submissions:

The special condition in the contract regarding acceptance of edible offals if required was inconsistent with the basic contract, which was for meat and edible offals, and could not over-ride the latter.

The expression 'edible offals' included spleen, head, brain, trotter, etc. which were not being accepted and this had resulted in a loss of Rs. 3.56 lakhs.

He was not liable to pay for purchases of substitute items.

In defence, the Sub-Area HQ stated as follows:

Provision existed in the contract for disputes regarding quantity and quality of supplies being decided by the Sub-Area Commander whose decision was to be final and binding.

There was a specific clause stipulating that the supply was subject to the approval of the Supply Officer or his representative. The Department was not bound to accept any meat fresh or edible offals offered.

The contract clearly provided for recovery of extra expenditure in purchases necessitated by the contractor's failure.

1.11. The arbitrator in a non-speaking award awarded (October, 1974) Rs. 1.75 lakhs (out of Rs. 3.56 lakhs claimed) to the contractor and also upheld the contractor's claim (Rs. 0.55 lakh) against the amount recoverable on account of risk purchases made by the Army.

1.12. The award of the arbitrator was contested by the Sub-Area HQ in a Civil Court.

The Court held (December 1975):

There was room for ambiguity in the definition of edible offals in the special conditions of the contract;

In regard to the risk purchase expenditure incurred, the essential requisite was rejection of supplies offered in accordance with the contract. When such rejection had become a matter of dispute touching on interpretation of the other terms of the contract, purchase of supplies could not be at the cost of the contract.

1.13. The Court, therefore, decreed that the Department was not entitled to any relief.

In addition to the above findings, the Court also observed:

".....it is rather to be regretted that the Government should have taken the attitude of resisting the award made by the arbitrator who was none other than the Commander... of Sub-Area. Even under...the general special conditions... it is the decision of the Sub-Area Commander that is final and binding on both parties. The arbitrator appointed by the QMG was none other than the Sub-Area Commander. The fact that he gave his decision as the arbitrator and not as a Sub-Area Commander exercising administrative authority does not in reality make the decision any the less than that of the Sub-Area Commander."

1.14. In April 1976, it was decided that no further appeal was to be preferred. The contractor was paid an amount of Rs. 1.97 lakhs (inclusive of interest) in April 1976 in pursuance of the Court decree.

Supply Depot No. 2

1.15. In regard to the contract for supply of meat to Supply Depot No. 2, the contractor claimed (April 1974) Rs. 7.91 lakhs on the same grounds as were urged by him in the pending case. The defence submitted by the Army authorities was also the same as that submitted to the arbitrator in the case of Supply Depot No. 1. The arbitrator (a different one) awarded (January 1977) an amount of Rs. 3.92 lakhs in favour of the contractor and also upheld the contractor's claim (Rs. 0.77 lakh) against the amount recoverable on account of risk purchases made by the Army. In March 1977, the Legal Adviser to the Ministry of Defence advised that the arbitrator's award need not be challenged for the following reasons:

The right of accept or reject certain edible offals with respect to quantity and quality rested with the contract operating officer and appeal from his decision lay to the Sub-Area Commander. No decision was taken by the contract

operating officer regarding the quality and consequently no appeal had been filed to the Sub-Area Commander.

The matter of specification and particularly that portion of the animal not required was not raised earlier before the arbitrator and it would be difficult to take up the point before the Court.

Although the award looked erroneous, it would be difficult to challenge it successfully in a court of competent jurisdiction.

An amount of Rs. 3.99 lakhs (including interest) was paid (May 1977) to the contractor in satisfaction of the award.

1.16. The Ministry of Defence stated (January 1978) that the award in the case of Supply Depot No. 2 was influenced by the award in respect of Supply Depot No. 1, appeal against which had not been upheld by the Court and it was in this context that the Legal Adviser had advised not to make an appeal in this case. The Ministry added that it was one thing to make a charge of misconduct against an arbitrator under the Arbitration Act but quite another to get it accepted by the Court.

1.17. Similar cases arose in the administration of meat contracts in 23 other Supply Depots in the Command. The total of the claims amounted to Rs. 61.17 lakhs. All the cases were referred to arbitration and the position (September 1977) was as under:

	Amount of claim	Amount awarded
	(Rs. in lakhs)	
2 claims decided against Government (May 1977)	2.95	1.05
3 claims decided against contractor but challenged in Court decision awaited.	13.13	
2 claims decided against contractors and accepted by Court	4.92	
9 claims decided against contractors and filed in Court to make the awards rule of Court decision awaited.	18.33	
6 claims pending before arbitrator(s)	19.78	
1 claim yet to be submitted to arbitrator by contractor.	2.06	
	61.17	

The Points noticed in this connection were as under:

The contractual provisions involved in the disputes were identical.

The submissions by the contractors were identical. Security deposits held are refundable to the contractors only after the accounts are finally settled. In the case of one depot, the arbitration award required the security deposit to be forfeited. The security deposit of Rs. 0.35 lakh had, however, been refunded (June 1975) even before the award was published (Apr.1 1977).

1.18. The procedure for invitation to tender for meat including edible offals was discontinued from the contract year 1974-75 from which period rates were to be quoted only for meat with the special condition that specified edible offals if required would be supplied at the rate of meat fresh.

(b) *Contracting patterns*

1.19. The pattern of contract for the years 1970-71 to 1977-78 for meat for Supply Depots Nos. 1 and 2 in close proximity indicated that the contracts were awarded to contractor 'A' during the entire period as under:

Supply Depot No. 1			Supply Depot No. 2		
Period	Rate per 100 kg.	Value	Period	Rate per 100 kg.	Value
(1)	(2)	(3)	(4)	(5)	6
	Rs.	Rs in lakhs.		Rs.	Rs. in lakhs
1-4-70 to 31-3-71	423.80	12.71	1-4-70 to 31-3-71	431.80	20.73
5-4-71 to 31-3-72	591.00	17.73	5-4-71 to 31-3-72	595.50	29.78
1-4-72 to 31-3-73	588.00	9.41	1-4-72 to 31-3-73	590.00	20.65
1-4-73 to 31-3-74	522.80	9.41	*1-4-73 to 31-3-74	524.80	22.65
1-4-74 to 30-9-74	839.80	8.82	1-4-74 to 30-9-74	838.80	17.67
6-10-74 to 31-3-76	876.80	27.62	6-10-74 to 30-9-75	876.80	36.66
29-4-76 to 30-9-76	767.00	8.28	27-12-75 to 30-9-76	846.80	35.68
(No. contract for the period 1-10-76 to 28-11-76 —local purchase made at average rate of Rs. 835.00 per 100 kg.)			(No. contract for the period 1-10-76 to 31-1-77 —local purchase made at average rate of Rs. 891.82 per 100 kg.)		
29-11-76 to 30-9-77	715.80	19.33	1-2-77 to 30-9-77	934.80	25.24

*These contracts led to arbitration as mentioned earlier.

1.20. Tenders for meat for Supply Depot No. 2 were invited 7 times during 1975-76. The negotiated lowest rate (on the sixth occasion) was of contractor 'B' at Rs. 874 per 100 kg. for one year. Contractor

'A' did not quote. On a reference made for financial advice, the CDA indicated in October 1975 that additional tendering was not advisable and that contract could be concluded with the lowest tenderer after invitation to reduce the rate. A reduced rate (after negotiation) of Rs. 863.50 (16.9 per cent lower than the average local market rate and 1.6 per cent lower than the last contract rate) was recommended by the Command HQ to QMG. The rate, however, was not agreed to by the QMG who indicated that an additional tender was desirable. Accordingly, another tender (seventh) was floated, the lowest rate received being of contractor 'A' for Rs. 846.80 per 100 kg. which was 3.4 per cent lower than the last contract rate, was accepted and a contract for Rs. 35.68 lakhs for the period from 27th December, 1975 to 30th September 1976 (9 months) was awarded on 24th December 1975 to contractor 'A'.

1.21. Meanwhile, the earlier contract had expired and local purchase was resorted to at varying rates from contractor 'A'. The average rate for local purchase worked out to Rs. 864.35 per 100 kg. which was 2.1 per cent over the new contract rate but 1.5 per cent less than the last contract rate.

1.22. The Ministry of Defence stated (January 1978) that the local purchase rates were subject to local market conditions whereas a contractor holding a contract might not depend on local availability and that the rates quoted by him would be based on his assessment of the market trends during the period covered by the contract.

1.23. Contractor 'A' was also holding the meat contract for Supply Depot No. 1 for 18 months (October 1974—March 1976) at the rate of Rs. 876.80 per 100 kg. The subsequent contract for Supply Depot No. I was also awarded (26th April, 1976) to contractor 'A' for a period of about 5 months ending September 1976 at Rs. 787 per 100 kg.

1.24. The Ministry stated (January 1978) that the rates tendered for one year contract were probably based on an apprehension that there would be further rise in the remaining part of the year due to fluctuations in the meat market on account of exports.

1.25. Since the contracts for both depots ended on 30th September 1976, action was taken to conclude contracts from 1st October, 1976 to 30th September, 1977 as under:

Supply Depot—1

First call	10th August 1976
Number tendered	2 (contractors 'C' & 'D')
Lowest tender	Rs. 744 per 100 kg. (contractor 'C')

1.26. It was considered that since the response was not encouraging, an additional call might be attempted. No invitation to reduce the rates was extended to the lowest tenderer. In the additional call, there were four tenders including that of contractor 'A' who had not tendered earlier. The rate of contractor 'A' (Rs. 715.80 per 100 kg.) was the lowest and it was accepted by the QMG. The contract concluded on 23rd November, 1976 was to commence from 29th November, 1976. It was noticed that during the interim period all local purchases were made from contractor 'A' at an average rate of Rs. 835 per 100 kg.

Supply Depot No.-2

1.27. The lowest rate of Rs. 727 per 100 kg. of contractor 'D' (on the third occasion) was recommended for acceptance on 30th October, 1976. Before approval (of QMG) was received, the contractor resiled (3rd November, 1976) from his offer on the ground that, while the rate quoted was for supplies commencing from 1st October, 1976, his tender had not been accepted till that date. On a reference by the local Army authorities whether the second lowest tender of contractor 'C' (Rs. 734 per 100 kg.) could be considered for acceptance, the QMG directed on 15th November, 1976 that an additional call be issued and that, in case it was found to be higher, the rate of Rs. 734 per 100 kg. quoted by contractor 'C' be accepted. The lowest rate obtained on next call being Rs. 935 per 100 kg. the second lowest tender of contractor 'C' was recommended for acceptance. As contractor 'C' also resiled and contractor 'E' who was the third lowest withdrew his offer on the ground that considerable time had elapsed since he quoted and that the arrangements made by him for supply had been cancelled, the QMG directed that fresh tenders be invited if the lowest rate of Rs. 935 per 100 kg. could not be reduced on negotiation. In the subsequent call, the lowest rate was Rs. 955 per 100 kg. of contractor 'E' which was considered high. In the next call, the lowest tendered rate of Rs. 934.80 per 100 kg. was that of contractor 'A' who had not tendered earlier. In response to a further call, contractor 'A' quoted Rs. 948 per 100 kg. The contract was finally awarded to contractor 'A' who had agreed to the earlier rate of Rs. 934.80 per 100 kg. A contract (value Rs. 25.24 lakhs) was therefore concluded with him on 29th January, 1977 (after a delay of 4 months) for the period February—September 1977. Meanwhile, local purchase was effected from contractor 'A' at an average rate of Rs. 891.82 per 100 kg.

1.28. The rate of contractor 'A' in respect of Supply Depot No. 2 was higher than that in respect of Supply Depot No. 1, though,

practically at the same station and for the same period, by Rs. 219 per 100 kg. The delay in finalising the contract (Supply Depot No. 2) when an economical rate (Rs. 727 per 100 kg.) was quoted earlier, resulted in an extra expenditure of Rs. 6.16 lakhs owing to the increased rate accepted later and Rs. 1.40 lakhs on account of local purchase (October 1976—January 1977) at higher rates.

1.29. The Ministry stated (January 1978) that meat rates shot up abnormally during October–November, 1976, that the tenderers who had resiled from their offers forfeited their earnest money of Rs. 1.07 lakhs and were removed from the list of approved contractors for a period of one year, that the delay could not be helped due to resiling by tenderers and that local purchase had to be resorted to at the prevailing rate.

Supply Depot No. 3

1.30. For the period October 1976—September 1977, a solitary tenderer quoted (August 1976) Rs. 625 per 100 kg. (4.9 per cent lower than the last contract rate and 50 per cent below the average local market rate) which was recommended for acceptance on 29th September 1976. The tenderer, however, resiled on 5th October, 1976 on the ground that he had not received the acceptance letter by 1st October, 1976 (from which date supplies were to commence) and had diverted his activities since he was not sure whether the tender would be accepted. The department forfeited his earnest money of Rs. 0.10 lakh which was challenged in Court (March 1977). During the period October—8th December 1976, local purchases were made at an average rate of Rs. 742 per 100 kg.

1.31. In the meantime, fresh tenders were floated twice without response. In the third call, contractor 'A' who had not quoted earlier was the lower of two tenderers (Rs. 787 per 100 kg.) and was awarded the contract for the period 9th December, 1976—30th September, 1977.

Supply Depot No. 4

1.32. In response to a tender enquiry for the supply of meat for the period October 1976—September, 1977, a single tender (Rs. 687 per 100 kg.) from contractor 'F' was received in August 1976 (valid up to 1st November, 1976). The rate was brought down to Rs. 611 per 100 kg. (0.97 per cent lower than the last contract rate and 38.90 per cent lower than the local market rate) on negotiation (10th September, 1976). The tender, recommended to the QMG on 13th October, 1976, was approved by him on 3rd November, 1976.

1.33. Meanwhile, the tenderer withdrew his negotiated offer of Rs. 611 per 100 kg. on 27th October, 1976 due to decline in the price of skin (which is disposed of by contractors) but agreed to supply meat at the original quotation of Rs. 637 per 100 kg. Another tender was invited (31st January, 1977) and a contract was concluded with contractor 'B' at the lowest tendered rate of Rs. 786 per 100 kg. (an increase of 28.64 per cent over the earlier approved rate) for March—September 1977. The delay in accepting the rate quoted in September 1976 resulted in an extra expenditure of Rs. 4.92 lakhs. The CDA observed (July 1977) that a contract could have been concluded at the original tendered rate of Rs. 687 per 100 kg. as offered by the tenderer while resiling from the negotiated rate.

1.34. The Ministry of Defence stated (January 1978) that in this case it was considered that the contractor had resiled from his offer and as such the question of considering his earlier rate did not arise. However, as mentioned earlier, though the contractor had withdrawn from his negotiated rate (Rs. 611 per 100 kg.) he had agreed to supply meat at his earlier rate of Rs. 687 per 100 kg.

Supply Depot No. 5

1.35. In response to tenders for supply of meat for the period October 1976—September 1977, the lowest rate obtained after negotiation was Rs. 670 per 100 kg. on the fourth call (33 per cent lower than the market rate and 10.30 per cent lower than last contract rate). The rate was considered most economical in consultation with the CDA and recommended for sanction on 18th September 1976. The QMG, however, suggested further negotiations with the contractor ('G') to bring down the rate but there was no response from the contractor. By the time contract with contractor 'G' for the period 25th October, 1976 to 30th September, 1977 was sanctioned by the QMG, the contractor indicated that the rate quoted in August 1976 was for commencement of supplies from 2nd October 1976 and in the absence of acceptance of tender by that date and because of sharp rise in prices in the local market he had to resile. The acceptance letter issued to the contractor was not accepted by him and the earnest money of Rs. 18,200 deposited by him was forfeited (January 1977).

1.36. A contract for the period 16th April, 1977 to 30th September, 1977 was finalised with contractor 'B' at the rate of Rs. 795 per 100 kg. which was 6.43 per cent higher than the last contract rate. The extra expenditure due to delay in finalising the contract thus worked out to Rs. 3.04 lakhs (cost of local purchase for the

interim period : 2.19 lakhs at average rate of Rs. 929.58 per 100 kg. and conclusion of contract at higher rate than that agreed to earlier: (Rs. 0.85 lakhs).

1.37. The Ministry stated (January 1978) that the validity of the tender was up to 31st October 1976 and as such the revocation was not binding; further, the contract was rescinded and the contractor was liable to pay compensation on account of risk and expense purchase in addition to suspension of business for one year.

III. Maintenance of butchery accounts

1.38. The conditions of supply, on the basis of which rates are quoted, include a requirement to maintain at all times a reserve of animals of not less than 3 days' supply in the depot butchery based on the average number of animals slaughtered daily. It was observed from a test check of the butchery accounts that this condition was not being enforced and reserves often came down to below 50 per cent of the number expected to be provided.

1.39. Under the contract for supply of meat to Supply Depot No. 6 for 1973-74 (value Rs. 19 : 38 lakhs), contractor 'H' could not build up the stipulated reserve and the depot purchased the required number (2,541) of animals for Rs. 2.98 lakhs and handed them over to the contractor for slaughter. In his bills (up to November 1973), however, the contractor claimed payment for full supply of meat at the contract rates, viz., Rs. 1.55 lakhs, without payment of the value of the animals provided by the Department. While the correctness of the procedure was being questioned by the CDA, the contractor obtained (December 1973) Court orders to refer the question of non-acceptance of edible offals (of the animals slaughtered) to arbitration, including the attendant risk and expense purchases, and for stay against recovery of Government claims on this account. Although the question of expenditure incurred on building up the minimum reserve of animals was not in any way connected with the rejection of edible offals, the value of animals handed over to the contractor was not recovered from him and payment of his claim was made in February 1976 when the contractor brought in a contempt of Court notice. In addition, the immediate advantage gained by the contractor by sale of skins and offals of animals provided by the Department was stated (by the Supply authorities) to have amounted to Rs. 0.76 lakh.

1.40. Such purchases had initially been brought to the notice of the depot authorities by the CDA in December 1973. Later, internal

audit had advised that proper records should be maintained to indicate the contractor's acknowledgment and utilisation of live stock for conversion to meat. The depot authorities stated (October 1976) that no records had been kept as the purchases were deemed to be the property of the contractor.

1.41. While agreeing with the points brought out regarding non-maintenance of reserve, the Ministry of Defence stated (January 1978) that it was not practicable or advisable to enforce the provision relating to maintenance of reserve as this would virtually amount to running the contract at Government expense.

1.42. When the contractor failed continuously from October 1973 to make supplies, the CDA advised (November 1973) the QMG that the contract might be rescinded. Risk purchases continued to be made until March 1974 when the contract was rescinded 27 days before the due date of expiry. One of the conditions accepted by the Court in December 1973, while not agreeing to withholding of bills already preferred, was that the contractor was under obligation to make supplies till 31st March 1974 and that he might suffer irreparable injury if his bills were withheld. No supply was made by the contractor from October 1973 to the end of the contract period during which expenditure of Rs. 5.55 lakhs was incurred by the Department on local purchase.

1.43. The Ministry of Defence stated (January 1978) that the matter regarding recovery involved in the risk and expense purchase was under arbitration.

1.44. The above contract had an enabling provision to pay the contractor at rates fixed under a control order if the latter were lower than the contract rates, as under:

"As long as there is no control order under which the maximum price is fixed below the agreed price, Government shall pay for the goods supplied at the agreed rates and in the event of such control order being made and put into force, the price shall be maximum so fixed under the control order at the time of delivery."

1.45. In February 1975, one year after rescission of the contract in March 1974, contractor 'H' informed the QMG that a price control order had come into force on 16th August 1973 and that he was entitled to the difference between the contract rate and the rates in the control order. While the Ministry of Law felt that payment at control order rates, which represented the maximum price

permissible, was not involved as the contract rates were lower, directions of the QMG were received (September 1975) that if there was a control order the price should be the maximum fixed under the order and that the contract rates should be varied accordingly for the period during which the order remained in force. The contractor was paid (March 1976) an amount of Rs. 1.75 lakhs on account of the difference between the contract rate and the maximum rates stipulated in the control order.

1.46. The Ministry of Defence stated (January 1978) that the payment was authorised in consultation with the Ministry of Law whose view was that the control order should be taken as an Act of Legislature and that the contract rate should be varied accordingly.

IV. Purchase of eggs

1.47. A contract was concluded in April 1973 with the same contractor 'H' for supply of fresh eggs for the period April, 1973—March 1974. Due to default by the contractor, risk purchases (value: Rs. 0.50 lakh) were resorted to during 28th October 1973 to 30th March 1974. The contractor, however, moved the Court in May 1974 for settlement of the dispute through arbitration on the ground that he had supplied the entire quantity of eggs covered by the contract. The court directed (April 1975) the Army authorities to appoint an arbitrator in terms of the arbitration clause of the contract. The award of the arbitrator was awaited (September 1977).

1.48. In the meantime (September 1975), the contractor claimed an amount of Rs. 0.22 lakh being the difference between the price paid for the eggs supplied and the price fixed under the control order. No decision on the claim had yet been taken (September 1977).

COMMAND II

1.49. A review of the contracts concluded for articles of fresh supplies in Command II revealed the following:

Station 'X'

1.50. In response to tenders invited (May 1975) for supply of meat|poultry|eggs|bread at station 'X' for the period October 1975—September 1976, the overall lowest tender received in June 1975 from contractor 'I' was 13.1 per cent lower than the last contract rates. The rates were valid upto 1st November 1975. The Area HQ recommended acceptance of the offer of contractor 'I'.

1.51. In August 1975, the CDA advised the Command HQ that attempts be made to bring down the rate of bread quoted by con-

tractor 'I' from Rs. 328 to Rs. 320 per 100 kg. and to increase the rate of skin (of slaughtered animals) to be purchased by the contractor from Rs. 3 to Rs. 8 each. The CDA also suggested that an additional tender be issued to contractor 'J' who had offered telegraphically (5th August 1975) to quote lower rates (contractor 'J' had not quoted against the tender enquiry of May 1975).

1.52. Contractor 'I' declined to reduce the rate of bread and to increase the purchase rate of skin. He also did not respond to a request to extend the validity of his offer upto 30th November 1975. Command HQ could not process the case further within the validity period (1st November 1975).

1.53. Fresh/additional tenders were floated on different occasions and the response to these was as under:

Date of tender	Period of supply	Lowest rate	Remarks.
7th November, 1975 } 15th November, 1975 } 22nd November, 1975 }	December, 1975 } September 1976 }	No response	
29th November 1975	8th January—30th September 1976	Contractor 'K' quoted 11.3 per cent (later 9.4 per cent during negotiations) higher than the last contract rates.	The rates were considered by the Ministry of Defence, Ministry of Finance (Defence) to be very high.
6th February 1976	Upto 30th September 1976	Contractor 'J' quoted 7.8 per cent higher than the last contract rates.	Tender was not accompanied by earnest money and was considered not valid.

1.54. Subsequently, contractor 'K', on being approached again, reduced his rates further to 7.4 per cent higher than the last contract rates. A contract (value: Rs. 19.10 lakhs) for the period 25th March—30th September 1976 was finally concluded with contractor 'K' on 24th March 1976.

1.55. Failure to finalise a contract with the lowest tenderer on 1st call and consequent local purchase (1st October, 1975—24th March 1976) at higher rates resulted in an extra expenditure of Rs. 6.71 lakhs for the period upto 30th September 1976, as assessed by the Area HQ.

1.56. The Ministry of Defence stated (December 1977) that a Court of Inquiry was proposed to be held to pin-point responsibility with regard to the extra expenditure.

Station 'Y'

1.57. In response to tenders invited (May 1975) for supply of meat for the period October 1975—September 1976 at the station, the lowest quotation (7th June 1975) of contractor 'L' was found to be 2.8 per cent higher than the last contract rates. Additional tenders were invited on 21st June 1975 but there was no response. On 3rd call, the lowest quotation (30th June 1975) of the same contractor 'L' was 0.4 per cent lower than the last contract rates.

1.58. With a view to obtaining more favourable rates, fresh/ additional tenders were issued on 6 different occasions during 12th July—2nd September 1975 but without any response.

1.59. Thereafter, on the advice of the CDA, it was decided to conclude a contract with the lowest tenderer on 3rd call (contract 'L'). The tenderer, however, resiled (6th October 1975) from his offer since the date of commencement of supply (1st October 1975) was already over. On being approached, the second lowest tenderer on 3rd call, contractor 'M', also did not respond. Thereafter, additional tenders were invited on 5 different occasions during 22nd October 1975—24th January 1976. The lowest quotation of contractor 'N' (24th January 1976) was 7.2 per cent higher than the last contract rates. A contract for the period 12th March—30th September, 1976 (value: Rs. 20.78 lakhs) was concluded (6th March 1976) with contractor 'N'.

1.60. Failure to finalise a contract with the lowest tenderer on 3rd call and consequent local purchase (1st November 1975—11th March 1976) at higher rates resulted in an extra expenditure of Rs. 1.16 lakhs for the period upto 30th September 1976.

1.61. The Ministry of Defence stated (December 1977) that the loss was due mainly to observance of the contract procedure and tendering/retendering at the instance of the Accounts authorities as well as lowest tenderers resiling from their offers. The Ministry added that the loss would be mitigated to a certain extent due to forfeiture of earnest money of the tenderers who resiled from their offers.

[Paragraph 43 of the Report of the Comptroller and Auditor General of India for the year 1976-77—Union Government (Defence Service).]

Mode of purchase by Supply Depots

1.62. The role of the Army Service Corps includes provisioning, receiving, holding, maintaining, transporting, issuing and accounting

of all items of supplies and petroleum, oils and lubricants for the Armed Forces. The following three methods are adopted for arranging supplies:

- (i) Central purchase:
- (ii) local contract; and
- (iii) local purchase.

1.63. The main central purchases comprise rice, atta, dal, sugar, oil, coal and petroleum products and are arranged by the Army Headquarters through various central purchase organisations.

1.64. Local contracts for supplies consist of all fresh food articles (vegetables, fruits, meat etc.), firewood and charcoal.

1.65. Local purchases are to be resorted to when supplies from normal sources are not available or when demands are very small.

1.66. As the Audit paragraph mainly deals with the meat contracts, the Committee desired to know the procedure for inviting, processing and accepting of tenders for meat contract. As intimated by the Ministry, the following procedure is followed in this regard:

(a) Invitation to Tender Enquiries

1.67. Contractors are registered for items and stations for which they desire to do business. Due publicity is given for inviting new contractors to get themselves registered prior to tendering action each year. Based on the financial standing and report of civil authorities, the prospective businessmen are registered as ASC contractors at the level of Commands. Before the actual date of opening of tenders due publicity is again given and letter/telegraphic intimation sent to all the registered contractors for that item and station. The initial tender enquiries are made three to four months prior to the actual date of commencement of contract.

(b) Processing and Acceptance of Tenders

1.68. On the appointed date and time the contractors put the tender forms supplied earlier by the executive authorities in the sealed tender box. The rates quoted for specified items, quantities and place are entered by tenderers in the schedule forming part of the contract tender forms. The tender box is opened by a board of officers and the rates quoted are announced and entered in the Comparative Statement of Tenders (CST) in the presence of contractors. If the rates received are considered reasonable, these are recom-

mended by the executive officers empowered to do so in the appropriate column of CST. The tender documents alongwith the CST are then sent to appropriate financial advisers (DCDA/CDA) for their advice and pre-scrutiny. In case the CDA concur with the rates, the contract is put up to appropriate Competent Financial Authority (CFA) for sanction. In case CDA advise retendering additional tendering/invitation officers to reduce, the case is put up to CFA for his orders. As per the existing orders the additional tendering is to be resorted to in exceptional cases with personal approval of CDA and sanction to be given by one higher CFA. For the contracts sanctionable by CMG, the permission for doing additional tendering can be given by Army Commander at Command level. In case the advice of CDA is not acceptable, the contract can be sanctioned/recommended under Rule 240, FR Part I upto the level of Command only. The CMG, however, cannot use this prerogative as he can sanction contracts only after the same are concurred in by the Ministry of Finance (Defence) or for value over Rs. 16 lakhs (now Rs. 25 lakhs) which are also approved by the Ministry of Defence. Most of the meat contracts of major stations fall under this category. The tendering action for GOC-in-C and CMG contracts also takes place at Area level. In case of retendering or additional tendering fresh tender notices are issued. One complete cycle of tender action from the date of opening of tenders till sanction takes from 10 to 20 days depending on the level of CFA and intermediary channels in case there are no further additional tenders or invitation offers to reduce. This, however, seldom happens.

1.69. With regard to the mechanism adopted for obtaining local market rates from time to time, the Committee have been informed by the Ministry of Defence that local market rates are obtained every month by an officer detailed by Station Commander and by a board of officers every quarter at the end of each month/quarter from Local Civil authorities/Marketing Societies based on the daily/monthly average rates of each local purchase item. The quarterly rates are published in Station/Formation orders and the last three years average local market rates (ALMR) are entered in the CST for comparison with the tendered rates. Whenever day-to-day local purchases are done at risk and expense of the contractor or in the absence of regular contracts, that day local market rate is again obtained by an officer appointed by Station Commander before any risk purchase is carried out. This rate so obtained on day-to-day basis may be higher or lower than the monthly average market rates depending on the season or market situation.

COMMAND—I

Review of meat contracts.

1.70. Among the local contracts administered by the Supply Depots, those for supply of meat form the highest in value. According to the Audit paragraph, the value of purchases of meat by the Supply Depots in Command-I during the last 5 years, as indicated by the Controller of Defence Accounts, was as follows:

Year	Value of purchases made (Rupees in crores).
1972-73 .	2.55
1973-74 .	2.13
1974-75 .	5.17
1975-76 .	3.13
1976-77	4.04

1.71. However, the Ministry of Defence had intimated Audit in January 1978 that the value of purchases of meat during these years were as follows:

Year	Value (Rs. in crores)
1972-73	3.00
1973-74	2.75
1974-75	1.45
1975-76	3.63
1976-77	4.31

(a) Arbitration cases decided in 1976-77

1.72. The Committee were informed by Audit that the procedure for inviting tenders for meat dressed and meat on hoof and conclusion of meat contracts was laid down by the QMG's Branch in May 1968. According to this procedure, there is no provision for inviting tenders separately for meat fresh and edible offals.

1.73. According to the Audit paragraph, in Command I, until 1971, while inviting tenders for meat, quotations were called for separately for 'meat fresh' and certain specified items of 'edible offals'.

From 1971, in this Command a change was made in the schedule to the tender. According to this, contractors were required to specify rates in two parts as follows:

- (a) Part I for 'meat fresh' and specified edible offals, separately,
- (b) Part II for meat fresh including edible offals.

Although in Part II, the rate for meat was inclusive of edible offals, there was a clause in the special conditions to the contract which provided that edible offals such as kidneys, liver, tongue, brain and sweet bread, if required, will be taken over for issue at the rate of meat fresh. Contracts for meat from 1971-72 onwards were concluded and administered under this pattern.

1.74. The Committee desired to know the reasons for Command I to follow till 1971, a procedure, quite different from the one followed by other Commands as also in contravention of the procedure prescribed by QMG Branch in May 1968. In a note, the Ministry of Defence intimated as follows:

"Till 1970, the issue of meat fresh throughout India was to be made by calling tenders only for meat fresh including offals which were specified to be edible and were acceptable to the contract operation officer depending on the troops requirements and preference. Till then there was only one schedule in vogue for obtaining tenders for meat fresh. In addition to meat fresh rates, in Southern Command to meet hospital requirements separate rates for liver were being called for due to heavy demands while the other commands were calling for meat rates which included liver which was being issued to the hospitals from the contracted meat supplies. In 1970 it was envisaged to streamline the procedure for calling tenders for meat supplies in Southern Command so as to conform to the procedure in vogue in other commands. The issue was extensively examined in a meeting held in the office of the CDA, Poona and it was decided in consultation with the BASC, Southern Command that the practice of calling for tenders in two parts in Southern Command should be evolved to have comparison of rates of meat with specified offals and that of meat and specified offals separately as under, with a view to decide which was more economical to the State:

- (a) Part I—Rates of meat fresh and for certain edible offals separately.

(b) Part II—Rates for meat fresh including edible offals.”

1.75. The Audit paragraph reveals that two contracts (value: Rs. 9.41 lakhs and Rs. 22.65 lakhs) for supply of meat during 1973-74 to two Supply Depots Nos. 1 and 2 were awarded to contractor 'A' who had quoted rates in Part II—meat fresh including edible offals. (The contractor did not quote for Part I of the tender). Soon after the commencement of the contract, the contractor repeatedly represented to the Sub-Area HQ that the depots were not accepting edible offals which they were required to do under the accepted contract and that he was suffering considerable loss. The contractor was informed in June 1973 by the Sub-Area Hq. that edible offals would be taken only if required as per the special conditions of the contract. Meanwhile, the shortfall in the supply of meat (as a result of not accepting offals offered in lieu of meat) was made up by local purchase of authorised substitutes during November 1973—March 1974 at the risk and expense of the contractor at an extra expenditure of Rs. 1.32 lakhs for both the depots. In January 1974, the contractor requested that an arbitrator be appointed to settle the dispute under the provisions of the contract.

Definition of edible offals

1.76. The Committee desired to know the exact connotation of the words 'edible offals' as prevalent in the Army and the modes and extent of its consumption made in the Army. The Defence Secretary explained as follows:

“I have gone into it with reference to what it means in terms of army purchases, for army requirements. I find that basically the consumption is of liver and kidney. Sometime in the middle of '50s, in 1956, a circular was issued which laid down that even for the general consumption of the troops, because of the kind of preferences which had been indicated by the troops, it would be permissible, provided it can be purchased at the same rate as dressed meat, it will be permissible to provide to the troops liver, kidney and sweet bread, as it used to be described in those days and, later on, described as 'testicles'..... As a result of this, the above is the general pattern of consumption in the Army. In addition liver and kidney are treated as regular ration for officer Cadets in the training institutions. Once in a week there is a ration of kidney and liver which is provided as part of their ration.

The third category is hospitals. In the case of hospitals liver and kidney are treated as authorised normal food. In the

case of hospitals there is also an enabling arrangement which permits the doctor to prescribe for patients, depending on the disease, a variety of other kinds of edible offals which are from time to time prescribed, and these include liver, kidney, sweet bread, tongue, brain, head and feet. By and large, except for the point I made about the instructions, there is no basic change in this regard."

1.77. The Committee desired to know the main reasons for effecting a change in 1971, in Command I in this Schedule to the tender together with the advantages proposed to be achieved and actually achieved on the adoption of this change. In a note, the Ministry of Defence informed the Committee as follows:

"The factual background relating to the change made in Southern Command in 1971 was that some time in 1968, in the course of an inspection of the Command carried out by Army Headquarters, the letter found that unlike the other Commands, Southern Command were tendering for dressed meat and offals separately. It was also found that under this arrangement, Southern Command were paying higher price for offals than for dressed meat unlike the other Commands where the two categories of meat were being purchased at the same price. The Army Headquarters inspecting officers, therefore, suggested that Southern Command also consider falling in line with the other Commands.

The matter was gone into by Southern Command. In the course of consultations that took place between the ASC authorities of Southern Command and their associated Defence Accounts, they decided to introduce the new arrangement whereby tenders were invited in two separate parts—Part I asking for offals separately for dressed meat and for the specified items of offals individually and Part II for dressed meat including edible offals. It would appear that the intention behind this new arrangement was to elicit offers under both alternatives so that a judgement could be made as to the rates that would be most economical from the Government's point of view.

In the 3-years period between 1971—74 when the new arrangement was worked, 75 contracts were finalised on the basis of rates quoted by the tenderers under Part II and only 9 contracts on the basis of rates quoted under Part I. In all cases, the contracts were awarded on the basis of the lower rates quoted for meat dressed which being the pre-

dominant part of the demand had naturally to be the determining factor.

Since the overwhelming number of contracts were awarded under Part II, and also followed the lower rates offered for dressed meat, the Exchequer stood to gain for reason of the fact that under Part II offals were also available for purchase at the same rates as dressed meat and without having to pay higher prices—though, it is true that in a minority of instances, the rates offered under Part I had to be accepted being more advantageous for the main demand of dressed meat, involving separate and higher prices for offals.”

1.78. The Committee further desired to know as to whether prior clearance from the QMG's Branch was obtained before effecting the aforesaid change together with the reasons for not obtaining prior legal advice in giving effect to the modification. The Ministry of Defence informed the Committee as follows:

“Prior clearance from QMG's Branch, Army Headquarters was not obtained by Headquarters, Southern Command before modifying the special general conditions and schedule to their meat contract. However, after making the changes in consultation with their CDA, Army Headquarters were informed.

As the rules stood at the time, it was not clearly necessary that Southern Command should have obtained legal advice before making the change. However, it is considered desirable in future that legal advice should be obtained for making such changes in important contract documents and Army Headquarters are being advised accordingly”.

1.79. With regard to the failure of the authorities to obtain legal advice with regard to effecting the modification of 1971, the Defence Secretary informed the Committee as follows:

“It was not done; it would have been desirable to do so.”

1.80. It is seen from the Audit paragraph that contractor 'A', who was awarded contracts for supply to Depot Nos. 1 and 2 did not quote for Part I of the tender and had quoted only in Part II. The Committee desired to know the number of cases where tenderers had quoted rate in Part I and Part II. Since contractor 'A' had quoted rates only for Part II the Committee also desired to know as to how the comparative study was made. In a note, the Ministry of Defence informed as follows:

“In Southern Command in the year 1973-74 in all the 25 cases where the contractors who went into litigation quoted the

rates only in Part II of the Schedule. No contractor quoted in both the Parts. All the 25 contractors quoted in Part II made a plea for arbitration which was conceded to them on the advice of the Ministry of Law.

In the case of Golconda (Supply Depot I) meat contract 1973-74 three tenderers quoted rates; two tenderers quoted rates in both Part I and Part II but the third (successful) tenderer quoted rates only in Part II.

A comprehensive study could not be made as the contractor did not quote rates for Part I."

1.81. The Committee further enquired if it was legally correct to accept the offer of the contractor, who had quoted rates in one Part only. The Defence Secretary informed the Committee as follows:

"It was one and the same enquiry in which the parties concerned were asked to make the offers in two parts. In this particular case, the tender that was offered, related exclusively to part II. I don't think the legality was questioned anywhere. I believe it will be legal."

The Defence Secretary further added:—

"It was not actually challenged in any of the proceedings. My personal view—I am not a lawyer—is that on the ground of legality it will not be questionable. But it is true that the two parts related to one and the same tender enquiry."

1.82. Subsequently, the Ministry of Defence informed the Committee through a note that it was not obligatory on the part of tenderers to quote rates both in Part I and Part II of the schedule.

1.83. Asked as to what was the necessity of introducing the change in tender in 1971, when it was not effectively followed in practice. The Defence Secretary informed the Committee as follows:

"I think the objective was that of all the parties that one hoped would respond to the tender enquiry, some would respond to both; and as a result of the response, we would think of making a certain judgement what kind of decision should be taken."

1.84. The Committee pointed out that in the case of Supply Depot No. 1, two contractors had tendered in both the Parts and the successful contractor had tendered in only one Part. The Committee

felt that under these circumstances, it was difficult to compare which was cheaper and which was costlier, and as such the decision appeared to be arbitrary. A representative of the Ministry of Defence informed as follows:—

“It is not quite correct. Part I shows rates for the different items and quantities in respect of major items. The quantities are the same in Part I and Part II. For valuing the contract the quantities wherever given are multiplied by the rates and you will come to an exact price of the contract.”

1.85. The representative of the Ministry of Defence further added—

“When we say one tender is cheaper, we do not mean any particular item. We are taking totality of the purchases.”

1.86. The Committee pointed out that Part I had separate items, meet, liver, Kidney etc. and there were separate rates for these items. The Committee, therefore, enquired as to how the weight of each of these items was taken into account while striking average cost. The Defence Secretary explained as follows:

“The first arrangement visualised in Part I was that you ask for separate price for meat and for the other items. You have certain requirement of meat. You have certain requirements of offal. You look at the totality of the economy.

The comparisons are supposed to have been made in this case—comparison of economics of purchase of our needed quantities of meat and the needed quantities of offal in terms separated delineated Part I against consolidated offer as visualised in Part II. Then you can take an over-all judgement as to which would be more economical.”

The Defence Secretary further added:

“The fact is that the intention behind this enquiry was to see whether asking for offers separately for meat and for the two or three items of offal that we needed, had compared and contrasted with an enquiry for a consolidated package. That was the purpose of that enquiry.”

1.87. It is understood from Audit seen from the Audit Paragraph that recovery of Rs. 0.43 lakh on account of risk expense purchases made in Supply Depot 1 during November, 1973 to February, 1974 included in the figure of Rs. 0.55 lakh, claimed by the contractor, was

waived by the Army authorities and this waiver was subsequently cancelled by HQ Andhra Sub Area on 5 October, 1974. Similarly, recovery of Rs. 0.63 lakh on account of risk and expense purchases made in Supply Depot No. 2, during November, 1973-February, 1974, included in the figure of Rs. 0.77 lakh, claimed by the contractor, was waived by the Army authorities, and this waiver was also subsequently cancelled by HQ Andhra Sub Area on 5 October, 1974. The Committee desired to know the reasons for waiver of these recoveries together with the grounds on which these waivers were subsequently cancelled when the cases were already under arbitration. In a note, the Ministry of Defence intimated as follows:—

“On receipt of representation from the contractor (M/s ATCO Pvt. Ltd.) for waiving risk and expense purchases for the amount of Rs. 0.43 lakh during the period November 1973 to February 1974 pertaining to Golconda meat contract 1973-74 and Rs. 0.63 lakh pertaining to Trimulgherry meat contract 1973-74, the Sub Area Commander waived the said risk and expense purchases taking into consideration the factors:—

- (i) Due to drought there was an acute shortage of animals:
- (ii) There was a sudden escalation in the meat prices during the period and as a result contracts for meat had failed at a number of places. Thereupon, the CDA pointed out to HQ Southern Command that the reasons for waiving risk and expense purchases are not peculiar to M/s. ATCO only and the action taken by HQ ATNK and K Area and HQ Andhra Sub Area will result in an embarrassing position for the Government. Besides, the contractor filed a civil suit in Delhi Court in both the cases wherein he made a request to the court for (i) issue of stay order restraining the Government from withholding contractors bills and (ii) reference of the dispute pertaining to non-acceptance of offers to arbitrator. The court issued orders on 7 Aug. 1974 for reference of the dispute to arbitrator for adjudication and restraining the Government from withholding the payment of the bills and securities of the applicant in any of the contract till adjudication of the dispute by arbitration. Taking the above reasons into consideration waiver of the risk and expense purchases pertaining to the period Nov. 73 to Feb. 74 was cancelled in respect of meat contracts Golconda|Trimulgherry.”

Supply Depot 1.

1.88. It is seen that the Arbitrator in a non-speaking award of October, 1974 awarded Rs. 1.75 lakhs to the contractor out of Rs. 3.56 lakhs claimed by him and also upheld his claim for Rs. 0.56 lakh against the amount recoverable on account of risk purchases made by the Army. This award was subsequently contested by the Sub-Area HQ in a civil court. The court *inter alia* held that 'there was room for ambiguity in the definition of edible offals in the special conditions of the contract.'

1.89. Referring to the contention of the Ministry that certain Kind of offals were quite in demand, the Committee desired to know as to why the Army was not agreeable to accept the offals offered by the contractor alongwith meat. The Defence Secretary informed the Committee as follows:

"Army wanted such offals and such quantity of offals as they required."

Elucidating this point further, the Quarter Master General informed the Committee as follows:

"The contractors are aware of the fact that so far as Army is concerned the only edibles in which Army shows interest are three items. Therefore for them to have different interpretation at a later stage, if I am allowed to say so was only to get something out of it but when the Clause was drawn our interpretation was that it is only these three items."

1.90. The Committee sought clarification on the Army's contention of accepting the offals on selective basis, when these offals had been specified in the Tender. The Defence Secretary informed the Committee as follows:—

"All the five were specified. The point of dispute was not that one. In this case the dispute arose on the ground that the contractor interpreted it under Part II to mean that we were under an obligation to take whatever offals they gave. That is the main thing."

He further added:

"There are two kinds of demands we have to remember. So far as the hospital and Academies are concerned, in the first

case if the requirement is for offal, it is supplied to them and in the second case, that is, Academies, the requirement is limited to two kinds of offals. The two kinds, liver and kidney have to be given as part of the ration with certain prescribed periodicity. In that case it has to be procured and supplied irrespective of the fact that it may involve more expenditure because of its higher price compared to the dressed meat. In the second category, there is a requirement for it irrespective of the price by reason of medical prescription. If the doctor prescribes it to the patient, then that offal has to be supplied to him. In this case the requirement is indeterminate. Then the third category of consumption of liver, kidney, and testicles has been prescribed from 1956 as permissible for the common troops."

1.91. The Committee pointed out that from the reading of the contract, it appeared that the Army had the option to take offals or not to take offals. The Committee, therefore, enquired whether it was justified to accept the offals on a selective basis in case the Army was prepared to accept offals. The Defence Secretary informed the Committee as follows:—

"...this clause is not entirely clear. It is somewhat ambiguously worded. The clause gives us some sort of the right to pick and choose. The court has said that the wording is ambiguous and this led to a lot of dispute."

1.92. The Committee were informed during evidence that the necessary modifications were made in the tender in the year 1977 to clear the ambiguity as pointed out by the Court. Asked whether this modification was carried out on obtaining legal advice, the Quarter Master General confirmed that this was done only after legal advice.

1.93. A comparison of clauses pertaining to meat offals in Southern Command with that of others is as under:—

(a) *Clause changed by HQ Southern Command which was operative from 1971 to 1973.*

"I/We agree that the skins, cuttings and inedible offals of sheep and goats slaughtered for dressed meat only under the contract shall remain by/our property and in tendering my/our rates for supply, I/We shall take this into consideration. I/We agree that edible offals such as sheep or goats kidneys, livers, hearts, tongue or sweet bread, if

required, will be taken over for issue by officer operating the contract at the rate for fresh meat shown in Part II of the schedule. Additional requirement of edible offals if any will be met by me/us and these will be paid at the rate of meat fresh."

(d) *Clause operative in other commands during 1971 to 1973.*

"I/We agree that the skins, cuttings and inedible offals of sheep and goats slaughtered for dressed meat only under the contract shall remain my/our property and in tendering my/our rates for supply, I/We shall take this into consideration. I/We agree that edible offals such as sheep or goat kidneys, liver, heart, tongue or sweet bread if required, will be taken over for issue by the officer operating the contract at the rate for fresh meat shown in the schedule."

(c) *Clause changed in all commands after arbitration cases in 1977.*

"I/We agree that I/We will supply liver, tongue, head, feet, testicles and kidneys for hospital requirements at the rate of meat dressed (Jhatka/Halal) by weight as and when demanded by contract operating officer. Any quantity of liver, testicles and kidneys left over after meeting hospital requirements, will be accepted as part of meat ration by weight at the rate of meat dressed (Jhatka/Halal); tongue, head and feet will not be taken over if not required for hospital and will be disposed of by me/us in any manner I/We like. Intestines, gut, stomach, skin, heart, lungs, udder, sweet bread (Pancreas) and spleen will not be taken over by the contract operating officer and will be disposed of by me/us in any manner I/We like."

1.94. Commenting upon the modification carried out in 1977, the Defence Secretary informed the Committee as follows:

"If you will kindly allow me to speak for myself, I would like to go into it and take a further look at this 1977 reform to see whether there is need to further improve it."

1.95. It is seen that in April, 1976, it was decided that no further appeal was to be preferred. The Contractor was paid an amount of Rs. 1.97 lakhs (inclusive of interest) in April 1976, in pursuance of the Court decree. The Committee desired to know whether the decision not to file an appeal in this case was taken in consultation.

with the Ministry of Law. In a note the Ministry of Defence intimated as follows:—

“In the dispute pertaining to meet contract 1973-74 Depot No. 1, the respondents refrained to file an appeal in the High Court against the judgement of the District Court on the specific advice of the Ministry of Law, who saw no misconduct on the part of arbitrator which is one of the three grounds for challenging the award under Section 30 of the Arbitration Act.”

Supply Dept No. 2

1.96. The Audit Paragraph reveals that in regard to the contract for supply of meat to Supply Depot No. 2, the contractor claimed, in April, 1974, Rs. 7.91 lakhs on the grounds as were urged by him in the case of his claim in respect of Supply Depot No. 1 and the Department submitted the similar defence before the arbitrator. The Arbitrator awarded, in January 1977, an amount of Rs. 3.92 lakhs in favour of the contractor and also upheld the contractor's claim for Rs. 0.77 lakh against the amount recoverable on account of risk purchases made by the Army.

1.97. It is seen from the Audit Paragraph that in March, 1977, the Legal Adviser to the Ministry of Defence advised that the Arbitrator's award need not be challenged.

1.98. One of the reasons given in the legal advise for not challenging the award of the arbitrator was that the contract operating authorities did not take any decision regarding the right to accept or reject certain edible offals and, therefore, no appeal was filed to the Sub-Area Commander. The Committee desired to know the reasons for not taking the said decision by the contract operating officer. In a note, the Ministry of Defence stated as follows: ‘

“It is not correct to say that the contract operating officer did not take a decision regarding the right to accept or reject certain edible offals. In this case the contract operation officer in observance of clause 6 of IAFZ—2120 accepted to the extent required the edible offals actually mentioned in Part II of the Schedule read with para 26 of the special general conditions and refused to accept other offals. As per the provision of contract clauses there was no necessity for him to represent to the Sub-Area Commander. The contractor represented against this decision to the executive officer, and when the executive officer did not sustain the representation, the firm represented to higher

administrative authorities, namely, BASC Southern Command, Sub-Area Commander, Area Commander and QMG. When his alleged grievance did not find redress, with the administrative authorities, he filed a civil suit in Delhi Court.

1.99. It is further seen that as per legal advice the specifications of the animal particularly that portion which was not required by the Department was not raised before the Arbitrator. The Committee desired to know the reasons for not raising this point before the arbitrator. In a note, the Ministry of Defence has stated as follows:

"In the course of arbitration proceedings of meat contract Trimulgherry 1973-74, it was argued by the respondents that edible offals other than those specifically mentioned in Part II of the Schedule read with clause 26 of the special general conditions were not to be considered for acceptance. These two were also to be taken when required."

Appointment of an Arbitrator

1.100. It is seen from the Audit Paragraph that soon after the commencement of the contracts in respect of Depots Nos. 1 and 2, the contractor repeatedly represented to the Sub-Area HQ that the depots were not accepting edible offals, which they were required to do under the accepted contract, and that he was suffering considerable loss. The contractor was informed in June, 1973, by the Sub-Area HQ that edible offals would be taken only if required as per the special conditions of the contract. The Committee, therefore desired to know as to why the Sub-Area Commander was then appointed an arbitrator of his own decision. In a note the Ministry of Defence have stated as follows:

"As per clause 21 of IAFZ-2120, the competent Financial Authority sanctioning the contract or his successor is competent to enter into reference to adjudicate over the dispute. Where he himself cannot enter into reference, QMG is to appoint arbitrator. GOC-in-C Southern Command could not himself enter into reference in this case and, therefore, Sub Area Commander of Andhra Sub Area was recommended to the QMG for the appointment. When recommendation for appointment as arbitrator is made the guiding factor is that an officer conversant to the maximum extent with the circumstances under which the disputes have arisen is considered for appointment as arbi-

trator. For this reason the choice fell on Sub Area Commander. It would not be correct to mix the office of Sub Area Commander with that of the arbitrator as in the first capacity he acts as an administrative authority and in the subsequent capacity he acts as a jurist after divesting himself from all the strings which are attached to his office as an administrator."

1.101. The Committee desired to know whether any guidelines have been laid down with regard to the appointment of an arbitrator. The Ministry of Defence intimated that there was no hard and fast line or guideline laid down for appointment of an Arbitrator. The Ministry have further stated:—

"The general guiding factor is that an officer to be appointed as arbitrator should be a senior officer who by virtue of long service is sufficiently experienced in service matters and field conditions and is more mature and considerate in taking balanced decisions. The officers generally appointed arbitrators are in the rank of Brigadier."

1.102. Referring to the observation of the Court on the Award of the arbitrator in respect of Depot 1 that '.....it is rather to be regretted that the Government should have taken the attitude of resisting the award by the arbitrator who was none other than the Commander of Sub-Area. Even under.....the general special conditions.....it is the decision of the Sub-Area Commander that is final and binding on both he parties.' The representative of the Ministry of Defence clarified the position as follows:—

"In both these cases the arbitrators were different. They were holding the same appointment but different individuals."

1.103. The Committee emphasized that in principal it was expected that if a person had something to do with the decision either of rejection or of acceptance, he could not sit in judgment over his own decision. While agreeing to this principle the Defence Secretary stated as follows:

"The principle is wholly unexceptionable that the individual who gives an arbitration award should not have had anything to do with the particular matter on which he has to give the award.

May I also say this for your information that after this case came to our notice in the Ministry as a result of the audit paragraph, we are also considering whether the pre-

sent arrangement is satisfactory where the arbitrator writes only 'Accepted' or 'Rejected' and does not explain his decision. This arrangement of the so-called non-speaking order, in our tentative view, is not satisfactory and we are at the moment examining the desirability of laying down that he shall explain the reasons on the basis of which he has given the decision, for the record so that people above have an opportunity to check if he has not acted irresponsibly."

Other Arbitration Cases

1.104. It is seen from the Audit paragraph that similar cases arose in the administration of meat contracts in 23 other Supply Depots in the Command. The total of the claims amounted to Rs. 61.17 lakhs and all these cases were referred to arbitration. With a view to know the relevant details about all these cases, the Committee desired to know the number of claims awarded in favour of the contractors but against the Government and also the number of cases where awards went against the Government and the arbitrators appointed exercised administrative jurisdiction over the concerned Supply Depots. In a note, the Ministry of Defence explained:

"Out of a total of 25 arbitration cases pertaining to claims of the contractors due to non-acceptance of all offals in 1973-74 meat contracts, four have been concluded in favour of the claimants as under:

Supply Depot.	Direct Administrative Authority	Arbitrator appointed by	Amount claimed	Amount Awarded
(Rupees in lakhs)				
1. Trimulgherry	Station Commander/Sub Area Commander	QMG	7.90	3.91
2. Golconda.	Station Commander/Sub Area Commander	Do.	3.56	1.75
3. Ahmedabad	Station Commander/Sub Area Commander	Do.	1.56	0.64
4. Aurangabad	Station Commander/Sub Area Commander	Do.	1.39	0.41

The four cases decided against the Government were adjudicated by Sub Area Commander who can be said to have direct administrative control over the Supply Depots. The role of an officer having administrative control over a

Supply Depot cannot be compared with his role and authority when he sits on judgement as an arbitrator to decide a case of that Supply Depot."

1105. The Committee further enquired about the present position of the cases pending before the arbitrators/filed in the court. In a note, the Ministry of Defence intimated as follows:

"Out of 25 arbitration cases pertaining to claims for meat offals, the latest position is as under:

(a) Awards in favour of the claimants. . .	4
(b) Awards in favour of the Government . . .	13
(i) Which have been made rule of the Court. . .	8
(ii) Not made rule of the Court. . .	3
(iii) Set aside by Court. . .	2
(c) Cases still under arbitration . . .	13
(d) Claim not projected by contractors. . .	3
	<hr/> 25"

1106. With regard to the 5 cases still under Arbitration, the Committee desired to know the dates on which these cases were referred to Arbitration, the reasons for pendency of Arbitration proceedings and also whether any time-limit has been prescribed for finalisation of award by the Arbitrators. In a note, the Ministry of Defence have stated as follows:

"Dates on which five pending arbitration cases in regard to acceptance or otherwise of offals were referred are:

Contract	Period	Date of reference to Arbitrator
(i) Meat contract Jaipur .	1973-74	26 Jan 1974
(ii) Meat contract Udaipur.	1973-74	26 Jan 1974
(iii) Meat contract Bikaner	1973-74	05 Mar 1974
(iv) Meat contract Jodhpur.	1973-74	16 May 1974
(v) Meat contract Kotah . . .	1973-74	06 Mar 1974

The contractors in these cases have not cooperated in finalisation of the proceedings and when statutory period of four months for concluding the reference expired, they did not agree to the enlargement of time. In such situation Court alone is competent to enlarge the time Under Section 28 of Arbitration Act. Our applications for enlargement of time in the cases are *sub-judice* in the Courts having jurisdiction.

Under the Arbitration Act a time limit of four months is laid down for making an award. This time limit is extendable by mutual consent of the parties. In case it is not possible, the time can be enlarged by the Civil Court having jurisdiction. The proceedings are, however, delayed as the contractors do not cooperate to appear before the arbitrator on one pretext or the other."

1.107. It is seen that the security deposits held are refundable to the contractors only after the accounts are finally settled. However, it is learnt that in the case of one depot, the arbitration award required the security deposit to be forfeited but the security deposit of Rs. 0.35 lakh had been refunded in June 1975 even before the award was published in April 1977. The Committee desired to know the reasons for refunding the security deposit before receipt of the award of the Arbitrator and whether any responsibility has been fixed for this lapse. In a note, the Ministry of Defence have stated as follows:

"The meat contract Pune 1973-74 ran its course satisfactorily and the Government had no claims against the contractor. After the contractor gave 'No Demand Certificate' implying that he had no further claims and after OC Supply Depot gave 'No Claim' certificate, the security money of Rs. 0.35 lakhs against the contract was released by CDA as per existing orders. The contractor subsequently took the dispute in regard to non-acceptance of offals for arbitration through a Civil Court. As per existing rules there was no justification for withholding payment of the security to the contractor. As the Government had no claims and the security deposit has been released according to rules on the subject, the question of fixing responsibility for releasing the security does not arise."

Contracting Patterns

1.108 The Audit paragraph reveals that the pattern of contracts for the years 1970-71 to 1977-78 for meat for supply depots, No. 1 and

2 in close proximity indicated that the contracts were awarded to contractor 'A' during the entire period as under:

Supply Depot No. 1			Supply Depot No. 2.		
Period	Rate per 100 kgs. Rs.	Value (Rupees in lakhs)	Period	Rate per 100 kgs. Rs.	Value (Rupees in lakhs)
1-4-70 to 31-3-71	423.80	12.71	1-4-70 to 31-3-71	431.80	20.73
5-4-71 to 31-3-72	591.00	17.73	5-4-71 to 31-3-72	595.50	29.78
1-4-72 to 31-3-73	588.00	9.41	1-4-72 to 31-3-73	590.00	20.65
1-4-73 to 31-3-74*	522.80	9.41	1-4-73 to 31-3-74*	504.80	22.65
1-4-74 to 30-9-74	839.80	8.82	1-4-74 to 30-9-74	838.80	17.67
6-10-74 to 31-3-76	876.80	27.62	6-10-74 to 30-9-75	876.80	36.96
29-4-76 to 30-9-76	767.00	8.28	27-12-75 to 30-9-76	846.80	35.68
(No contract for the period 1-10-76 to 28-11-76—local purchase made at average rate of Rs. 835.00 per 100 kgs.)			(No contract for the period 1-10-76 to 31-3-77—local purchase made at average rate of Rs. 891.82 per 100 kgs.)		
29-11-76 to 30-9-77	715.80	19.33	1-2-77 to 30-9-77	934.80	25.24

*These contracts led to arbitration as dealt with in the preceding paragraphs.

1.109. The Committee desired to know the general instructions laid down from time to time prescribing the maximum and minimum periodicity of contracts. In a note, the Ministry of Defence informed the Committee as follows:

"As per FR Part II, Rule 246 the contracts are generally to be of 12 months duration commencing and concluding with financial year. Contracts for duration over one year but less than three years can be concluded if considered more economical by sanction of next higher CFA. For contracts over three years Government sanction is required. Shorter duration contracts (less than one year) can be concluded under the sanction of GOC-in-C.

In the wake of 1973-74 inflation and erratic market trends of meat, it was decided that simultaneous tender enquiries be floated for six months, one year and one-and-half year to decide on the most economical course to be adopted.... Subsequently in 1976 general instructions were revised so that time of commencement of contract could coincide with the flush season availability of items

as an experimental measure for two years.....At certain stations therefore, to have uniformity in periodicity shorter duration contracts had to be concluded within a command."

1.110. The Committee further desired to know the details of the contracts for the period 1974—76, where lower rates quoted for half-yearly tenders were rejected on the ground that rates obtained for longer duration would be more economical in the long run. In a note, the Ministry of Defence have stated as follows:

"There was an instance that rates for meat contract Golconda achieved for 6 months period 1 October 1974 to 31 March 1975—Rs. 839.80 per 100 kgs. were cheaper than the rates for the period 1 October 1974 to 30 September 1975 (one year)—Rs. 882.80 and 1 October 1974 to 31 March 1976 (one and a half year)—Rs. 876.80. The six months contract rates were not considered for sanction of contract despite being cheaper. After discussion of the case by the Army Commander with the CDA Southern Command, it was recommended by Command Headquarters that the contract for one and a half year be sanctioned. When this recommendation was projected for acceptance, the Ministry of Defence suggested acceptance of 6 monthly contract. The acceptance of longer contract was mooted for the reason that the difference between 6 monthly and 18 monthly rates for Golconda and Margao is 4.01 per cent and 3.35 per cent respectively. Considering that the price level for food stuffs in general had not then stabilised so far, increase of the above order for contracts of longer duration should not be considered excessive. The other point was that live stock may be available at cheaper rates at that time due to drought in Rajasthan, Madhya Pradesh and Uttar Pradesh but after 8 to 10 months the peasants will sell their live stock at higher rates to make up their losses. Further due to rise in cost of transport on account of increase in petrol rates and railway freights the rates are not likely to come down despite anti-inflationary measures by the Government. In view of these reasons contract for 18 months was sanctioned."

1.111. It is seen from the contracting pattern of Supply Depots No. 1 and 2 as depicted in the Audit paragraph that upto 30 September 1974, the period of contract was generally the same but therear-

ter the similarity in regard to period of contract in respect of these Depots have not been maintained. The Committee, therefore, desired to know the reasons for varying the period of contract effective from 6th October, 1974, in these 2 Supply Depots in close proximity particularly when the contracts were awarded to the same contractor ('A5') at the same rates. In a note, the Ministry of Defence have stated:

"Due to steady rise in meat price in the year 1972-73, instructions were issued by Army HQ *vide* letter No. B/78902/Q ST5 dated June 28, 1973 that tenders for three periodicities, viz., six months, one year and one and a half year should be called for and the one most economical should be negotiated for execution of contract. A proposed issue of the said instructions rates for six months, one year and one and a half year contracts were called for. In meat contract Golconda 1974-75, the rates quoted for 18 months contract were considered economical to the State and in the case of Trimulgherry 1974 contract the rates for 12 months contract were considered economical."

1.112. The Audit paragraph reveals that tenders for meat for Supply Dept No. 2 were invited 7 times during 1975-76. The negotiated lowest rate (on the sixth occasion) was of contractor 'B' at Rs. 874 per 100 kgs. for one year. Contractor 'A' did not quote. On a reference made for financial advice, the CDA indicated in October, 1975 that additional tendering was not advisable and that contract could be concluded with the lowest tenderer after invitation to reduce the rate. A reduced rate (after negotiation) of Rs. 863.50 (16.9 per cent lower than the average local market rate and 1.6 per cent lower than the last contract rate) was recommended by the Command HQ to the QMG. The rate, however, was not agreed to by the QMG who indicated that an additional tender was desirable. Accordingly, another tender (seventh) was floated, the lowest rate received being of contractor 'A' for Rs. 846.80 per 100 kg. which was 3.4 per cent lower than the last contract rate, was accepted and a contract for Rs. 35.68 lakhs for the period from 27th December 1975 to 30th September, 1976 (9th months) was awarded on 24 December, 1975 to contractor 'A'.

1.113. It is learnt from Audit that the QMG, while advising that an additional tender be floated, had stated that the firm (Contractor E) had intimated Army Headquarter by a letter that in case additional tenders were floated, the firm would bring down the rates lower than Rs. 855 per 100 Kg. The Committee desired to know as to

how such approaches are concurred in. The Committee also sought confirmation whether contractor 'E' had tendered in the additional tender and if so the rate tendered by this contractor. In a note the Ministry of Defence have stated as follows:—

“Generally the reduction in meat rates in Southern Command for the contracts to commence from 1, October 1975 in the neighbouring stations of Trimulgherry was in the region of 6 per cent. The Ministry of Defence who in this case had the sole authority to accept or reject the tenders decided that since reduction in the case was only 1.6 per cent an additional tender should be done. When the Ministry of Defence were examining this case three contractors sent telegrams to Ministry of Defence, Ministry of Finance (Defence) and QMG offering lower rates if additional tender is done. On additional tendering the rates came down by 3.4 per cent effecting an approximate saving of Rs. 68,000.

It would, therefore, be seen that the decision to do additional tendering is not taken by QMG or the Ministry of Defence because of the approaches of the contractor but with a view to achieve most economical rates.

In the first tender enquiry on 14th August, 1975 solitary tenderer M/s. Sunder Lal Taneja quoted rates which were rejected. On additional tendering on 25 August 1975, solitary tenderer M/s. ATCO (Pvt.) Ltd. quoted lowest rates which were marginally lower from CCR rejected. On 23 September, 1975 another additional tender was opened where another solitary tenderer M/s. Thampinarayan quoted rates which were lower by 1.6 per cent not found economical by Ministry of Defence. One more negotiation was attempted with M/s. Thampinarayan but reduction was not satisfactory and, therefore; Ministry of Defence reiterated that one more additional tender be attempted wherein all tendering firms quoted rates and the lowest tender was of M/s. ATCO whose rates were now reduced by 3.4 per cent as against the earlier reduction of 1.6 per cent and therefore it was considered advisable to clinch the deal. It would, therefore, be seen that the firm which intimated the telegram did quote rates in this tender enquiry.”

1.114. It is seen from the Audit paragraph that contracts for both Depots Nos. 1 and 2 ended on 30 September, 1976. Action taken in respect of these two Supply Depots and the other Supply Depots in Command I for concluding contracts for the period from 1 October, 1976 to 30 September, 1977 has been dealt with in the following paragraphs:

Supply Depot No. 1

1.115. In reference to First Call of 10 August, 1976, in respect of Supply Depot No. 1, only two contractors ('C' and 'D') had tendered and the lowest tender of Rs. 744 per 100 kgs. was from contractor 'C'. It was considered that since the response was not encouraging, an additional call might be attempted. No invitation to reduce the rates was extended to the lowest tenderer. In the additional call, there were four tenders including that of contractor 'A' who had not tendered earlier. The rate of contractor 'A'* (Rs. 715.80 per 100 Kg.) was the lowest and it was accepted by the QMG. The contract concluded on 23rd November, 1976 was to commence from 29th November, 1976. It was noticed that during the interim period all local purchases were made from contractor 'A' at an average rate of Rs. 835 per 100 Kg.

1.116. The Committee desired to know the reasons for not negotiating with the lowest tenderer of the First call, to reduce the tendered rates and also as to why re-invitation of tenders was not considered necessary. In a note the Ministry of Defence have stated as follows:—

"In the initial tenders for conclusion of meat contract (Supply Depot No. 1) Golconda 1976-77 opened on 10 August, 1976, M/s. Diwan Chand Kalsi & Sons (contractor 'D') were the lowest tenderer (Rs. 744 per 100 kgs.). The same were recommended by the executive authority to the CDA. In his pre-scrutiny advice on initial tenders, CDA had opined that the high rates quoted may be due to the fact that quantities in respect of delivery points II and III shown 'as required'. Therefore, an additional tender with approximate quantities of supplies required under delivery points clearly specified may bring down the rates. This advice of CDA was accepted by the com-

*Addl. tender was opened on 8-9-1976.

This was the negotiated rate after receipt of tender (original rate was Rs. 716.80).

petent authority (GOC-in-C). Additional tender was opened on 8th September, 1976; out of four tenders received—two tenders, including M/s. ATCO Pvt. Ltd. (contractor 'A') and M/s. Diwan Chand Kalsi & Sons (contractor 'D') quoted the same rates (Rs. 734 per 100 figs.) which were lowest. Simultaneous invitation offers were extended to both wherein they reduced the rates but the reduction given by contractor 'A' in two negotiations being more (Rs. 715.80 per 100 kgs.) his rates were accepted."

1.117. The Committee further enquired whether the tenders received on First call were still open for acceptance when additional tenders were invited. The Ministry of Defence confirmed through a note that the set of tender opened on 10 August, 1976 was still valid when additional tender was opened on 8 September, 1976.

1.118. The Committee desired to know as to why the additional tenders floated/opened on 8-9-1976, could not be finalised before 1-10-1976 i.e., the date of commencement of supplies. In a note, the Ministry of Defence have stated as follows:—

"On doing the additional tendering on 8, September, 1976 M/s. ATCO quoted the same rate (Rs. 734 per 100 Kg.) as were quoted in the previous tender enquiry by M/s. Diwan Chand Kalsi. Simultaneous invitation offers were extended to both the parties wherein M/s. Acto offered reduction of 6.4 per cent which was more as compared to M/s. Diwan Chand Kalsi. The CDA, however, desired further reduction which was also given by M/s. Atco. The contract was sanctioned on 23rd November, 1976. The delay has been caused as the process of doing negotiations has to be at the level of Area HQ and seeking of advice of CDA which are at different stations and takes time. Besides, time is required to process the contract papers at each lower level and finally at Delhi between Army HQ, Ministry of Defence and Finance (Defence)."

1.119. The Committee further desired to know the extra expenditure incurred due to delay in finalization of the aforesaid rate contract for Supply Depot No. 1 for 1976-77 and consequent local purchases at the rates higher than the contract rate. In a note, the Ministry of Defence have stated:

"The average local purchase rate of meat at Golconda from 1 October, 76 to 28 March, 77 was over Rs. 853/- per 100

kgs. As compared to the previous and future contract rate of Rs. 767/- and Rs. 715.80 respectively, an approximate additional expenditure of Rs. 1,10,160/- and Rs. 1,92,780 therefore; is said to have been incurred.

Due to delay in finalisation of contracts for reasons mentioned earlier, in consultation with the Legal Advisers clause 9 of IAFZ-2137A (contract deed) was framed stipulating that a tenderer will *keep his offer open 3-4 weeks after the date of commencement.* It was intended to enable the Government to forfeit his earnest money accompanying his tender should he resile from his offer within the validity period. In some cases contractors have now gone to the Court to contest action of the Government of forfeiting the earnest money on the plea that their contract should have been sanctioned prior to the actual date of commencement notwithstanding the validity of their offer kept open beyond that date.

The loss, therefore, made out is only theoretical as in a fluctuating market day to day local purchase rate may be higher or lower than the contract rate. As far as we know there is no provision to write off such expenditure."

Supply Depot No. 2

1.120. The lowest rate of Rs. 727 per 100 kg. of contractor 'D' (on the third occasion) was recommended for acceptance on 30th October, 1976. Before approval (of QMG) was received, the contractor resiled (3rd November, 1976) from his offer on the ground that, while the rate quoted was for supplies commencing from 1st October, 1976, his tender had not been accepted till that date. On a reference by the local Army authorities whether the second lowest tender of contractor 'C' (Rs. 734 per 100 Kg.) could be considered for acceptance the QMG directed on 15th November, 1976 that an additional call be issued and that, in case it was found to be higher, the rate of Rs. 734 per 100 Kg. quoted by contractor 'C' be accepted. The lowest rate obtained on next call being Rs. 935 per 100 Kg.. The second lowest tender of contractor 'C' was recommended for acceptance. It is further understood from Audit that the lowest tendered rate obtained on additional tender on 20-11-76 was Rs. 951 per 100 Kg. which was reduced by contractor 'B' to Rs. 935 per 100 Kg. after negotiation.

1.121. The Committee desired to know the reasons for which the lowest rate of Rs. 727/- per 100 Kgs. of contractor 'D' could not be accepted before 1 October, 1976 together with the reasons for which the second lowest offer for Rs. 734/- per 100 kgs. could not be considered for acceptance instead of reinviting tenders. In a note the Ministry of Defence have stated as follows:

"After the expiry of the previous contract on 30 Sep. 76, tender inquiry for this contract which was due to commence from 1 Oct. 76 started during July 76. In the tender opened on 10 Aug. 76, M/s. Sunder Lal Taneja and Sons was the lowest tenderer, his rates being 6.76 percent lower than current contract rates and 13.57 percent lower than average local market rates. The contract documents were forwarded to CDA for his pre-scrutiny remarks, who on 26 Aug. 76 did not concur the rates and intimated that additional tender be floated. In another tender enquiry on 8 Sep. 76 M/s. Diwan Chand Kalsi and Sons (Contractor 'D') quoted 10.08 percent and 16.85 percent lower than the current contract rates and average local market rates respectively. Since the level of reduction desired by the CDA had not been achieved, second additional tender was opened on 17 Sep. 1976. Where M/s. Diwan Chand Kalsi and Sons again quoted lowest rates which were 13.79 percent and 20.09 percent lower than the current contract rates and average local market rates respectively. The lowest tenderer was invited to reduce rate on 25 Sep. 76, and offered reduction by which the rates came down to 14.23 percent and 20.49 percent lower than current rates and average local market rates respectively. The contractor, however, declined to reduce the rates any further. When the documents were forwarded to the CDA on 13 Oct. 76, they did not concur with the rates and wanted another invitation offer of reduction to be given to the contractor. CDA further advised that in case the contractor was not willing to reduce, they have no objection in finalising this contract. On 18 Oct 76, the contractor was called for negotiations. He declined further reduction, on 26 Oct. 76. The contract documents duly recommended were forwarded by Headquarters Southern Command to Army Headquarters on 30 Oct 76. In the meantime, the contractor resiled from his offer on 3 Nov. 76 though his validity of offer was open upto 30 Nov. 76.

On 20 Nov. 76, another additional tender was floated wherein M/s. Thampi Narain and Co. quoted rates which were

10.62 and 2.55 percent higher than the current contract rates/average local market rates. Since these rates were very high, the rates quoted by the second lowest tenderer in the previous set of tender (M/s. Sunder Lal Taneja and Sons) were recommended for acceptance. Unfortunately he also resiled from his offer on 25 Nov 76. Therefore, an attempt was made to conclude the contract with third lowest tenderer in the same set (second additional tender) M/s. Salig Ram and Co, who also resiled from their offer.

Apropos the advice tendered by the Legal Adviser, the earnest money of all these three tenderers was forfeited as per clause 9 of IAFZ-2137-A (contract deed). Since all the tenderers of the second set of additional tender had resiled, fresh tender for the period 1 Jan. 77 to 30 Sep. 77 were floated and opened on 9 Dec. 76 and the contract was concluded with M/s. ATCO (Private) Ltd. at the rate of Rs. 934.80 which was 10.57 percent and 2.5 percent higher than current contract rates/average local market rates with the concurrence of CDA Southern Command and approval of Ministries of Defence and Finance(Def)."

1.122. It is seen that the delay by QMG in arriving at the decision beyond the date of commencement of the contract with contractor 'D' at the rate of Rs. 727 and subsequently with the contractor 'C' at the rate of Rs. 734 has resulted in considerable extra expenditure of Rs. 6.16 lakhs by way of increased rate and Rs. 1.40 lakhs on account of local purchases made from contractor 'A' during the same period.

1.123. The Committee further desired to know the reasons for the abnormally high contract rate of Rs. 934.80 for Supply Depot No. 2 for the supply period commencing from 1-2-1977 as compared to the rate of Rs. 715.80 effective from 29 November 1976, in respect of Supply Depot No. 1, the two depots being located in close proximity. In a note, the Ministry of Defence stated as follows:

"Since the meat contracts Golconda and Trimulgherry ended on 30 September 1976, action to execute contracts from 1 October 1976 to 30 September 1977 was taken as under:

Supply Depot No. 1 (Golconda)

First Call	10 August 1976.
Number of tenderer	2
Lowest tender.	Rs. 744 per 100 kgs. (Reduced Rs. 734/-).

It was considered that since the response was not encouraging an additional call might be attempted. No invitation was extended to the lowest tenderer to reduce the rates. In the additional call there were four tenders including that of contractor 'A' (ATCO Pvt. Ltd.) who had not tendered earlier. The rates of contractor 'A' (Rs. 715.80 per 100 kg.) was the lowest and it was accepted by QMG. The contract was concluded on 23 November 1976 with the approval of Ministry of Finance (Defence) and Ministry of Defence and it commenced on 29 November 1976.

Supply Depot No. 2 (Trimulgherry)

Tenders for concluding meat contract Trimulgherry 3 October 1976 to 30 September 1977 were floated on 10 August 1976. In a response two tenders were received and in the pre-scrutiny of tenders it was decided in consultation with the finance authorities to call for additional tenders. Additional tenders were called and opened on 8 September 1976 to find that 3 tenderers had quoted the rates. Since the rates achieved were still considered on the high side, another additional tender was floated on the advice of CDA on 17 September 1976. Again three tenders received in response. The rates received in response to additional tender were still higher than rates achieved for Golconda meat contract 1976-77 (Rs. 715.80 per 100 kg.). In consultation with the financial adviser an invitation to the lowest tenderer was extended to reduce the rates. The firm reduce the rates from Rs. 731 to Rs. 727 per 100 kg. on 17 September 1976. These rates were still higher than Golconda rates and another invitation was extended to the lowest tenderer to reduce the rates which he declined to do. When the offer of the lowest tenderer on reduced rates was referred to Army Headquarters for sanctioning the contract on the rates achieved; the lowest tenderer resiled from his offer before execution of the contract in his favour. At this stage another additional tender was called on 20 November 1976 and a solitary offer was received. Even after invitation to reduce rates was extended to this tenderer, the rates achieved were still higher than the rates of the second lowest tenderer in the previous set of additional tenders which were still in hand. Similarly the second lower tenderer and the third tenderer also resiled from their offer before the contract could be finalised with either of them. All three offerers resiled from their offer

on 3 Nov 76, 25 Nov 76 and 27 Nov 76 respectively before the expiry of validity period which was 30 Nov 76. In the context of resiling from offer by all the tenders, fresh tendering had to be done and the contract was concluded w.e.f. 1 Feb., 77 as against 23 Nov. 76 in the case of Golconda Contract."

Supply Depot No. 3

1.124. According to the Audit Paragraph, for the period October 1976—September 1977, a solitary tenderer quoted (August 1976) Rs. 625 per 100 Kg. (4.9 per cent lower than the last contract rate and 50 per cent below the average local market rate) which was recommended for acceptance on 29th September 1976. The tenderer, however, resiled on 5th October 1976 on the ground that he had not received the acceptance letter by 1st October 1976 (from which date supplies were to commence) and had diverted his activities since he was not sure whether the tender would be accepted. The department forfeited earnest money of Rs. 0.10 lakh which was challenged in Court (March 1977). During the period October-8th December 1976, local purchases were made at an average rate of Rs. 742 per 100 kg.

1.125. In the meantime, fresh tenders were floated twice without response. In the third call, contractor 'A' who had not quoted earlier was the lower of the two tenderers (Rs. 787 per 100 kg.) and was awarded the contract for the period 9th December 1976—30th September, 1977.

1.126. The Committee desired to know the date upto which the tender received in August 1976 was valid. Since the tendered rate of Rs. 625 was 4.9 per cent lower than the last tendered rate and 50 per cent below the average local market rate, the Committee also enquired about the reasons for which the same could not be accepted before the actual date of commencement of supply. The Committee also desired to know the decision of the Court on the contractor's petition against the forfeiture of earnest money. In a note the Ministry of Defence have stated as follows:—

"Tenders for supply of meat fresh at Khadakvasla for period 1 Oct. 76 to 30 Sep. 77 were floated and opened on 7 Aug. 76 but there was no response. Tenders were again floated and opened on 23 Aug. 76. Only solitary tenderer M/s Elahi Malang and Co quoted their rates. The rate quoted by the firm was Rs. 625/- per 100 Kgs. and they did not respond to repeated offers of invitation to reduce. The

validity date of the offer was open upto 1 Nov. 76. Additional tenders were floated on 22 Sep. 76 and there was no response. The contract was sanctioned by the CFA on 2 Oct. 76 that is 30 clear days before the expiry of the validity date i.e. 1 Nov. 76 with commencement date with effect from 5 Oct. 76 to 30 Sep. 77 with the concurrence of CDA Southern Command. On 5 Oct. 76 the contractor M/s Elahi Malang and Co. intimated in writing that they were resiling from their offer on the plea that they had not received the Acceptance Note of tender upto 1 Oct. 76. In this context it is pertinent to submit that the contract was sanctioned well within the validity period and communications with regard to the sanction were sent to the contractor in time by telegram on 2 Oct. 76 followed by Acceptance of Tenders dated 3 Oct. 76 within the validity date. The contractor was given notice to commence the contract by the contract operating officer and the executive authorities but he failed to do so. The contractor neither deposited the security deposit nor commenced the supplies within the stipulated period as per terms and conditions of the contract agreement. The contract was terminated with effect from 23 Oct. 76 in terms of clause 2 of IAFZ-2120 (Form of the tender) forming part of the contract deed, with the penalty of forfeiture of earnest money amounting to Rs. 10,000/- (1 per cent of the estimate contract value; for the contractors opted for lumpsum earnest money). The action of forfeiture of earnest money of M/s Elahi Malang and Co. has been challenged by him the Court in which is being defended."

Supply of Depot No. 4

1.127. It is seen from the Audit Paragraph that in response to a tender enquiry for the supply of meat for the period October 1976—September 1977, a single tender (Rs. 687 per 100 Kg.) from contractor 'F' was received in August 1976 (Valid up to 1st November, 1976). The rate was brought down to Rs. 611 per 100 Kg. (0.97 per cent lower than the last contract rate and 38.90 per cent lower than the local market rate) on negotiation (10th September 76). The tender, recommended to the QMG on 13th October 1976, was approved by him on 3rd November 1976.

1.128. Meanwhile, the tenderer withdrew his negotiated offer of Rs. 611 per 100 Kg. on 27th October 1976 due to decline in the price of skin (which is disposed of by contractors) but agreed to supply meat at the original quotation of Rs. 687 per 100 kg. Another tender

was invited (31st January 1977) and a contract was concluded with contractor 'B' at the lowest Tendered rate of Rs. 786 per 100 kg. (an increase of 28.64 per cent over the earlier approved rate) for March-September 1977. The delay in accepting the rate quoted in September 1976 resulted in an extra expenditure of Rs. 4.92 lakhs. The CDA observed (July 1977) that a contract could have been concluded at the original tendered rate of Rs. 687 per 100 kg. as offered by the tenderer while resiling from the negotiated rate.

1.129. The Ministry of Defence have intimated Audit in January, 1978 that in this case it was considered that the contractor had resiled from his offer and as such the question of considering his earlier rate did not arise. However, as mentioned earlier, though the contractor had withdrawn from his negotiated rate of Rs. 611 per 100 kg. he had agreed to supply meat at his earlier rate of Rs. 687 per 100 kg.

1.130. It is seen that while seeking approval of the QMG on 13 October, 1976, the Command HQ had clearly indicated that the offer was valid upto 1st November, 1976. The tender documents were received at Army HQ on 18-10-1976 and the tender was approved by the QMG only on 3rd November, 1976, by which time the validity of the offer had already expired. The Committee desired to know as to why the approval of the QMG could not be accorded well before 1-11-1976. The Committee also desired to know as to why the reduced rate of Rs. 611 per 100 kgs. obtained as a result of negotiation on 10-9-1976 was not accepted till 27 October, 1976 when the contractor withdrew the reduced offer. The Committee further sought confirmation to the fact whether any responsibility for the costly lapse had been fixed and if so, details thereof. The Committee also enquired as to why the contractor's original tendered rate of Rs. 687/- was not considered when the contractor resiled from his negotiated rate of Rs. 611. In a note the Ministry of Defence have stated as follows:—

“The first call of tenders for meat Kirkee 1976-77 was opened on 7 Aug 76 without any response. Second call for tenders was opened on 23 August 76 and a solitary tenderer quoted Rs. 687/- per 100 Kgs. Subsequently on negotiation, rates were reduced to Rs. 611/- in the second week of Sep 76. In the mean time further efforts were made at Command HQ to achieve further reduction in rates by doing one more additional tender opened on 21 Sep 76 but there was no response. On 28 Sep. 76, HQ Southern Command advised HQ M and G Area to process rates obtained in the previous set of tenders. The tender documents for meat contract Krkee (Supply Depot No. 4) for the period Oct. 76 to Sep. 77 with rates of Rs. 611/- per 100 Kgs. after final

negotiation and pre-scrutiny by CDA reached Army HQ on 1976. Since the contractor did not aurn up for negotia-
quently the alidity was extended to 20 Nov. 76 by the con-
tractor. While the contract was under consideration of
the Ministry of Defence and Ministry of Finance (De-
fence), the contractor sent a communication on 27 Oct. 76
to DDST M and G Area that he could only give meat at
previous quoted rate of Rs. 687/- per 100 Kgs. Since only
solitary tenderer had quoted rates, after due consideration
of contract papers by the Ministries of Defence and Finance
(Defence) by 01 Nov. 76, the contract could only be sanc-
tioned on 3 Nov. 76. Subsequently as per legal advice ob-
tained on contractor's representation, it was opined that a
legal contract has not come into existence as the contrac-
tor's letter of 27 Oct. 76 amounts to resiling from his offer
before sanction of contract. Under Clause 9 of IAFZ-2137-
A, his earnest money amounting to Rs. 37 lakhs was for-
feited. Since the contractor's original rates of Rs. 687/-
were already reduced by him to Rs. 611/- the old rates
became null and void as tender is deemed to have been
amended."

Supply Depot No. 5

1.131. It is seen from the Audit Paragraph that in response to
tenders for supply of meat for the period October 1976—September
1977, the lowest rate obtained after negotiation was Rs. 670 per 100
kg. on the fourth call (33 per cent lower than market rate and 10.30
per cent lower than last contract rate). The rate was considered
most economical in consultation with the CDA and recommended for
sanction on 18th September, 1976. The QMG, however suggested
further negotiations with the contractor G to bring down the rate
but there was no response from the contractor. By the time contract
with contractor 'G' for the period 25th October 1976 to 30th Septem-
ber, 1977 was sanctioned by the QMG, the contractor indicated that
the rate quoted in August 1976 was for commencement of supplies
from 2nd October 1976 and in the absence of acceptance of tender by
that date and because of sharp rise in prices in the local market he
had to resile. The acceptance letter issued to the contractor was not
accepted by him and the earnest money of Rs. 18,200 deposited by
him was forfeited (January 1977).

1.132. A contract for the period 16th April, 1977 to 30th September,
1977 was finalised with contractor 'B' at the rate of Rs. 795 per
100 kg. which was 6.43 per cent higher than the last contract rate.
The extra expenditure due to delay in finalising the contract thus

worked out to Rs. 3.04 lakhs (Cost of local purchase for the interim period: Rs. 2.19 lakhs at average rate of Rs. 929.58 per 100 kg. and conclusion of contract at higher rate than that agreed to earlier Rs. 0.85 lakhs).

1.133. The Ministry of Defence intimated Audit in January 1978 that the validity of the tender was up to 31st October, 1976 and as such the revocation was not binding further; the contract was rescinded and the contractor was liable to pay compensation on account of risk and expense purchase in addition to suspension of business for one year.

1.134 The Committee desired to know the reasons for not accepting the rate of Rs. 670 per 100 kg. soon after negotiation. The Committee also desired to know the reasons for considering further negotiation necessary when rate of Rs. 670 was already negotiated. In a note, the Ministry of Defence have stated :

"The tender documents pertaining to M/s. MM Chokalingam Chetty and Co. with rates from Rs. 660/- to Rs. 670/- per 100 kgs. for Madras (Supply Depot No. 5) meat contract 1976-77 were received at Army H.Q. on 21 September, 1976. On examination of tendered rates for different delivery points, it was found that the rates for delivery points were higher in comparison to the rates at ASC butchery. H.Q. Southern Command, was, therefore, requested to negotiate and got the rates reduced for other delivery points and intimate results by 28 Sep., 1976. Since the contractor did not turn up for negotiation, the contract was recommended to Ministry of Finance (Defence) on 7 Oct., 1976, concurred in by them on 19 Oct., 1976 and finally sanctioned on 23 Oct., 1976.

The rates obtained for three earlier calls were as under :

	ASC Butchery Saidpet	St. Thomas Mount	Tambar ram
On 10 Aug. 76	Rs. 805/-	825/-	725/-
On 30 Aug. 76	Rs. 660/-	672/-	670/-
Reduced on negotiation on 10 Sep. 76.	Rs. 660/-	670/-	670/-

1.135. The Audit Paragraph reveals that in a number of cases fresh/additional tendering was resorted to several times with the

result that it took a long time in processing tenders and consequently the tenderers resiled from their offers on the plea that date of commencement of supplies/validity period of their offers was over. In August 1971 the Ministry of Defence had impressed upon the Service H.Q.s. that it was necessary on the part of contract concluding authorities to complete all action for conclusion of contract well in time before the expiry of the validity date of the rates quoted by the tenderers so that the necessity for requesting the tenderers to extend the validity date of their tenders or resorting to fresh tendering did not normally arise. The Ministry had, therefore, issued instructions that the administrative authorities should take all possible steps to obviate delays in finalising contract so as to avoid consequential loss to Government by way of increase in rates.

1.136. The Committee desired to know as to why the aforesaid instructions were not followed by the contracting officers. The Committee also enquired whether any review has been made to obviate delays in contract action as revealed in the audit paragraph and if so, with what results. In a note, the Ministry of Defence have stated as follows :

"In ASC contracts, the precise role of the Executive Officer, the Competent Financial Authority (CFA), the CDA, the Ministry of Defence and the Ministry of Finance (Defence) have been clearly spelt out. After the inflation of 1973, the contractors, specially those dealing in meat trade suffered a heavy loss. The contractors started quoting high rates as the market trends could not be foreseen with any degree of accuracy due to wide and frequent fluctuations. As per the procedure of contract conclusion then in vogue, the Executive Officers and SFA on one side and CDA as Financial Adviser on the other did not function from a common platform. The comparative evaluation of tendered rates was being done either with current rates of the same contract or current tendered rates at other stations in that region. The contract rates generally sought to be achieved were much lower as compared to average wholesale market rates. Since additional tendering provided the security of holding the rates in the earlier tender valid against the risk of rates going higher in future tenders, the device came to be used frequently either by the Executive Officers themselves or on the instance of CDA to achieve lower rates. The contractors tended to quote very high rates in the initial calls as compared to previous contract

rates and did not reduce to the level as desired by CDA/CFA until a number of additional tendering have gone through. In the process sometimes the provisional date of commencement was overshoot. However, the date of validity of tender was got extended and contract sanctioned within the validity period. The Executive Officers, CFA and Financial Advisers were, therefore, forced to carry out a series of additional tendering and negotiations to achieve maximum economy. This process no doubt delayed the finalisation of contracts to a large extent. A review of our contract system has already been carried out and new procedure has now been evolved and put into effect as an experimental measure whereby the tenders are to be jointly examined by a panel of officers comprising of Executive Officer, representatives of CFA and CDA in comparison to a pre-determined reasonable rate pattern arrived at between CDA and Executive Officers. This panel of officers after examining the tendered rates can now negotiate with all the tenderers as against the previous practice of only with lowest tenderer. Additional tenders are to be recommended only in exceptional circumstances where a ring formation is suspected. This procedure is to be tried out for two years. Short period of its operation has proved that almost 60 per cent of meat contracts which were to commence from 1 October, 1978 were sanctioned by due date. The malady of additional tendering as it stands today is also under examination in consultation with legal and financial advisers."

1.137. The Committee further desired to know the total extra expenditure incurred in all the cases due to not accepting the lowest offers well in time. In a note, the Ministry of Defence have stated as follows :

"The extra expenditure incurred at five stations of Southern Command for delay in conclusion of meat contracts during 1976-77 and consequent local purchase during intervening period due to non-acceptance of lowest rates before 1 October, 1976 is being ascertained from Headquarters Southern Command and will be intimated at a later date."

III. Maintenance of Butchery Accounts

1.138. The conditions of supply, on the basis of which rates are quoted, include a requirement to maintain at all times a reserve of animals of not less than 3 days' supply in the depot butchery

based on the average number of animals slaughtered daily. It was observed by Audit from a test check of the butchery accounts that this condition was not being enforced and reserves often came down to below 50 per cent of the number expected to be provided.

1.139. The Audit Paragraph reveals that under the contract for supply of meat to Supply Depot No. 6 for 1973-74 valuing Rs. 18.38 lakhs, contractor 'H' could not build up the stipulated reserve and the depot purchased the required number of 2,541 animals for Rs. 2.98 lakhs and handed them over to the contractor for slaughter. In his bills upto November, 1973 however, the contractor claimed payment for full supply of meat at the contract rates, viz., Rs. 1.55 lakhs, without payment of the value of the animals provided by the Department. While the correctness of the procedure was being questioned by the CDA, the contractor obtained in December, 1973 Court orders to refer the question of non-acceptance of edible offals of the animals slaughtered to arbitration, including the attendant risk and expense purchases, and for staff against recovery of Government claims on this account. Although the question of expenditure incurred on building up the minimum reserve of animals was not in any way connected with the rejection of edible offals, the value of animals handed over to the contractor was not recovered from him and payment of his claim was made in February, 1976 when the contractor brought in a contempt of Court notice. In addition, the immediate advantage gained by the contractor by sale of skins and offals of animals provided by the Department was stated to have amounted to Rs. 0.76 lakh.

1.140. The Committee desired to know whether the contractor had formally approached the authorities to purchase 2541 animals for him and if not, the reasons for this purchase. In a note, the Ministry of Defence have stated as follows:—

“The contractor did not approach the executive authorities to purchase 2541 animals for him. The contractor as per terms of contract was required to maintain three days supply of animals as reserve which was approximately 240 animals. The contractor continued to fail to maintain the reserve and tender animals for day-to-day slaughter. The animals were purchased at his risk and expense under relevant clause of the special condition of the contract which reads as under:—

“In the event of the reserve laid down in special condition 2 falling below the prescribed limit, at any time the supply/operating officer shall be at liberty to purchase

such number of animals at our risk and expense as would complete the deficiency in the said reserve and I/ We agree that the animals so purchased at my/our risk and expense shall be fed, maintained, looked after and slaughtered by me/us in the same manner as animals procured and tendered by me/us under this contract."

1.141. The Committee also enquired as to whether the formal receipt of the contractor was obtained for these animals and further whether risk purchase provision existed in the contract and if so the reasons for not invoking this provision in the event of default by the contractor. In a note, the Ministry of Defence have stated as follows:—

"Formal receipt of animals supplied was not required to be obtained from the contractor but these were accounted for in the Butchery Accounts. Provision exists whereby risk and expense clause can be invoked in such cases as per clause *ibid* of special condition. The animals were handed over to the contractor for slaughter as per clause *ibid* of special condition. The risk and expense proforma in terms of the contract (including the cost of animals Rs. 2.98 lakhs) were made. In addition the endorsement that the amount of risk and expense were to be deducted were made by the OC Supply Depot on IAFZ-1520 pertaining to the contractor's bills."

1.142. The Committee further enquired the reasons for authorising payment of bills to the contractor as if he had procured the animals and whether any responsibility was fixed for this glaring lapse. In a note, the Ministry of Defence have stated as follows :

"Payment of contractor's bills was made due to Court interim injunction restraining the Government to withhold the bills and subsequent threat of the contractor to launch contempt of court proceedings. In view of the circumstances explained above and the fact that payment of outstanding bills without making adjustments was made on the advice of the Solicitor to the Government of India, there is no case for fixing responsibility for making the payment in question. This case has since been adjudicated by the arbitration and a sum of Rs. 5.93 lakhs which includes cost of animals has been awarded in favour of the Government. The award is awaiting to be made rule of the Court."

1.143. The Committee desired to know the mode of accounting for the expenditure incurred for the purchase of these animals and also as to why the provision relating to maintenance of reserve could not be enforced. In a note, the Ministry of Defence have stated as follows :

"The mode of accounting for the expenditure incurred for the purchase of these animals is through risk and expense notes.

The provision relating to maintenance of reserve animals was enforced by purchasing animals as per para *ibid* of special conditions of contract and treating the same as risk and expense purchase. In practice, it is very difficult for OC Supply Depot to purchase animals of required specifications every day as around Bombay Mandi sale takes place only once a week. In the event of contractor's failure to produce animals to make up the reserve slaughter for the days is made by eating the reserve and recouping the same as and when animals become available."

1.144. The Committee also desired to know the reasons for not recovering the value of animals from the contractor and also as to how this recovery could be a matter of dispute. In a note, the Ministry of Defence have stated as follows :

"When the contractor filed a suit for reference of the dispute in the contract for meat Bombay 73-74 to arbitration and issue of stay orders restraining the Government from withholding payment of pending bills, the Court did issue stay orders. Thereupon, the contractor resorted to contempt of court plea in that the Government despite issue of stay orders continued to withhold his bills. The Ministry of Law had advised that in order to foil the contempt of court plea all bills of the contractor be paid. It was in an effort to avoid the charge of contempt of court that adjustment of money due to the Government on account of purchase of animals could not be made. Since all the risk and expense recoveries have to be adjudicated in the face of Supreme Court ruling in "Raman foundary Vs. Government of India," Government dues resulting from purchase of animals on the risk and expense of the contractor become a subject of arbitration."

1.145. The Audit Paragraph further reveals that when the contractor failed continuously from October, 1973 to make supplies,

the CDA advised the QMG in November, 1973 that the contract might be rescinded. The contract was however rescinded on 5th March, 1974. Risk purchases continued to be made until March, 1974 when the contract was rescinded 27 days before the due date of expiry. One of the conditions accepted by the Court in December, 1973, while not agreeing to withholding of bills already preferred, was that the contractor was under obligation to make supplies till 31st March, 1974 and that he might suffer irreparable injury if his bills were withheld. No supply was made by the contractor from October, 1973 to the end of the contract period during which expenditure of Rs. 5.55 lakhs was incurred by the Department on local purchase.

1.146. The Committee desired to know the reasons under which the advice given by CDA in November, 1973 that the contract should be immediately rescinded was not accepted by QMG. The Committee also sought explanation as to why the QMG had waited for three months to rescind this contract involving non-supply during these months. In a note, the Ministry of Defence stated as follows :

"The contractor Shri J. K. Pruthi had started failing in meat dressed supply and maintenance of reserve of animals since September, 1973. With a view to forestall the risk and expense recoveries from his bills he went to the court raising the dispute of acceptance of edible offals and made a prayer that the case be referred to the arbitrator. Even after appointment of arbitrator by end of November, 1973 he never cooperated and blocked the proceeding by going to the court and getting stay order restraining the Government from withholding his bills. All along it was envisaged that after achieving what he asked for from the court including reference of the dispute to the Arbitrator, the contractor would improve his performance and cooperate in arbitration. But when he did not do so, the contract had to be rescinded on 2 March, 1974."

1.147. It is seen that the arbitrator had in July, 1978, awarded a total sum of Rs. 5.93 lakhs in favour of the Department. The Committee desired to know whether this amount has since been recovered and if not the steps being taken to recover this amount. In a note, the Ministry of Defence have stated as follows :

"Such arbitration award has to be filed in a court. Recovery of dues resulting from the award can only be enforced

after the award has been upheld by the court and made a rule of the court. The award has been filed in the Bombay High Court and recovery of the decretal amount will be sought when the award has been made rule of the court."

Ministerpretation of the Control Order

1.148. It is seen that in February, 1975, one year, after the rescission of the contract in March, 1974 Contractor 'H' informed the QMG that a price control order had come into force on 16th August, 1973 and that he was entitled to the difference between the contract rate and the rates in the control order. The orders of QMG were received in September, 1975, in contravention of the legal advice obtained, that if there was a control order the price should be the maximum fixed under the control order and that the contract rates should be varied accordingly for the period during which the order remained in force. In March, 1976, the contractor was paid an amount of Rs. 1.75 lakhs on account of the difference between the contract rate and the maximum stipulated in the control order. The Committee desired to know the circumstances under which QMG gave his aforesaid orders contrary to the legal advice together with the exact implication of QMG's directions viz. "the contract rate should be varied accordingly." In a note, the Ministry of Defence have stated as follows :

"Shri J. K. Pruthi, contractor, meat contract Bombay 1973-74 represented vide his applications dated 9 February, 1975 and 28 February, 1975 that there being a control order governing meat price in Bombay from 16 August, 1973 payment for his bills for the period 16 August, 1973 onwards be made at control rates and not contract rates. Headquarters, Southern Command examined the representation in consultation with the Asst. Legal Adviser to the Government of India, Bombay, Ministry of Law and forwarded the representation to Army Headquarters with the recommendation that in view of the legal opinion given by the Asstt. Legal Adviser, Bombay that the contract rate is not violative of the control order, the question of making payment of bills of Shri Pruthi at control rates does not arise.

When the representation was received in Army Headquarters it was referred to the Ministry of Law for their advice on the validity or otherwise of the request of Shri Pruthi. The Solicitor to the Government of India, Ministry of Law, however, advised as under:

"If there is a control order in force the price should be maximum fixed under the control order in force at the time

of delivery. Control orders are made in exercise of powers under delegated legislation and as such the control orders are not executive but legislative in nature'.

As the advice given by the Solicitor over-ruled earlier advice given by the Asstt. Legal Adviser, Bombay, action was taken as per the revised advice. No orders were issued by Army Headquarters till the earlier advice was over-ruled by the Solicitor.

QMG did not issue orders contrary to the advice tendered by the Ministry of Law. Orders issued by QMG were based on the final recommendation of the Law Ministry through the Solicitor to the Government of India. It was only on receipt of this advice that the orders were issued.

As the advice given by the Solicitor to the Government of India was that the case in question be dealt with in accordance with the interpretation given in his final legal advice, the instructions were issued to make payment of bills from 16 August 1973 to November 1973 at control rates instead of contract rates as per provisions of clause 22 of IAFZ-2120."

1.149. The Committee desired to know as to why the control price was treated as the ceiling price. The Defence Secretary explained as follows:—

"It was because of the final advice given by the Law Ministry to the effect that where there is a designated price in the control area, that shall be substituted for the contracted price. QMG's organisation or any organisation can take action accordingly."

1.150. The Defence Secretary affirmed that they were referring to the legal advice given by the Solicitor to the Government of India, as reproduced above.

1.151. The Committee pointed out that under the circumstances the Department could not have agreed to a price higher than that, but it did not mean that they could not give a lower price. The representative of the Ministry of Law stated as follows:—

"This opinion of the Solicitor was recorded on a reference made to him by the Finance Ministry raising two issues, namely:

"In view of so and so para, we feel that (a) the views expressed in para 9 of the judgment of the Supreme Court

and the advice of the Ministry of Law given in so and so note should prevail over the previous views expressed in earlier note so and so. Accordingly the contractor should be paid the difference between the contract rate and the control rate for the period the control rate remained in force. (b) Failing (a) above, the control order issued under the signature of the State Governor be taken as an Act of Legislature within the meaning of clause 22."

In the context of the above reference, the Solicitor's opinion was:

"If there is a control order in force, the price shall be the maximum fixed under the control order in force at the time of delivery."

1.152. The Committee enquired whether it was a question of erroneous interpretation. The Defence Secretary stated as follows:

"I would not like to take the responsibility of hazarding an opinion of my own. The Ministry accepted the legal advice and acted upon that."

1.153. Asked whether the authorities have now taken steps to recover the money, the Defence Secretary explained as follows:—

"What we did was to pay the price on the basis of the control order."

Purchase of eggs

1.154. The Audit Paragraph reveals that a contract was concluded in April 1973 with the same contractor 'H' for supply of fresh eggs for the period April 1973—March 1974. Due to default by the contractor, risk purchases * (value Rs. 0.50 lakh) were resorted to during 28th October 1973 to 30th March 1974. The contractor, however, moved the Court in May 1974 for settlement of the dispute through arbitration on the ground that he had supplied the entire quantity of eggs covered by the contract. The Court directed (April 1975) the Army authorities to appoint an arbitrator in terms of the arbitration clause of the contract.

1.155. It is learnt from Audit that the Arbitrator awarded in July, 1978, Rs. *0.63 lakh in favour of the Department. The Committee,

*According to Audit Rs. 0.50 lakhs represents the amount due from the contractor on account of difference between local purchase rate and contract rate.

therefore, desired to know, whether this amount has since been recovered and if not the steps being taken to recover this amount. In a note, the Ministry of Defence have stated as follows:—

“The arbitration award giving Rs. 0.63 lakhs to the Government has been filed in Bombay High Court for making a rule of the court and recovery of the decretal amount will be sought when the court has made the award a rule of the court.”

1.156. The Audit Paragraph further states that in September, 1975, the contractor claimed an amount of Rs. 0.22 lakh being the difference between the price paid for the eggs supplied and the price fixed under the control order. The Ministry of Defence intimated Audit in March, 1978, as follows:—

“.....the contractor's claim for Rs. 0.22 lakh has been rejected in consultation with the Legal Adviser (Defence) and the Solicitor to the Government of India.”

1.157. Analysing the aforesaid decision of the Ministry with their earlier decision of the Ministry in the meat case, dealt with in the preceding paragraph Nos. 1.140 to 1.151 where the Department subsequently paid to the contractor sum of Rs. 1.75 lakhs as the difference between the price as per the control order and the contract price, the Committee desired to know whether this payment of Rs. 1.75 lakhs was inadmissible and if so whether the Ministry now propose to recover this amount. In a note, the Ministry of Defence have stated as follows:

“When the contractor for meat Bombay 73-74 represented for payment of supply of meat made by him at Government control rates which were higher than the contract rate, the case was referred to the Ministry of Law and payment of Rs. 1.75 lakhs was made to the contractor on the advice of the Solicitor to the Government of India at that time. The payment in the eggs case was stopped as the arbitration proceedings had commenced by then.

A proposal for recovery of sum of Rs. 1.75 lakhs paid to the contractor was subsequently referred to the Ministry of Law for advice as to whether the amount can be recovered by us but the Solicitor has advised that case for recovery of the amount is legally not sustainable.”

Command II: Review of contracts for articles of fresh supplies
Station X.

1.158. In response to tenders invited (May 1975) for supply of meat|poultry|eggs|bread at station 'X' for the period October 1975-September 1976, the overall lowest tender received in June 1975 from Contractor 'I' was 13.1 per cent lower than the last contract rates. The rates were valid upto 1st November 1975. The Area HQ recommended acceptance of the offer of contractor 'I'.

1.159. In August 1975, the CDA advised the Command HQ that attempts be made to bring down the rate of bread quoted by contractor 'I' from Rs. 328 to Rs. 320 per 100 kg. and to increase the rate of skin (of slaughtered animals) to be purchased by the contractor from Rs. 3 to Rs. 8 each. The CDA also suggested that an additional tender be issued to contractor 'J' who had offered telegraphically on 5th August 1975 to quote lower rates (contractor 'J' had not quoted against the tender enquiry of May 1975).

1.160. The Committee desired to know the extent of anticipated saving due to reduction in the rate of bread in accordance with the advice of CDA as also the actual benefit expected from increase of rate of skin from Rs. 3 to Rs. 8 per animal. In a note, the Ministry of Defence have stated:

"The rate of bread quoted for Aijal (Station X) for 1975-76 combined items contract by Shri Kashi Nath Shaw (contractor I) was Rs. 328/- per 100 Kg. and second lowest tenderer was Rs. 320/- per 100 Kg. The scheduled quantity of bread was 5000 Kgs. The CDA desired reduction of rates to the second lowest tendered rates whereby an approximate saving of Rs. 400/- could have been achieved.

Since the exact number of skins that would have returnable to the State is not known, gain expected from increase of skin rates from Rs. 3/- to Rs. 8/- cannot exactly be forecast. However, based on scheduled quantity of 3,20,000 Kgs. of MOH and an outturn of 20 Kgs. approximately per animal 16000 animals skins would effect an approximately saving of Rs. 80,000/-"

1.161. The Committee further desired to know the reasons for taking cognizance by CDA of telegraphic intimation of Contractor 'J' of 5 August, 1975 and to suggest the issue of an additional tender

to him when he had not quoted against the tender enquiry of May, 1975 and also when these tenders had already been opened in June, 1975. The Committee also desired to know the existing general instructions for dealing with such cases. In a note, the Ministry of Defence have stated as follows:

"Contractor 'J' (M/s. Avtar Singh) is Class 'A' registered contractor with BASC Eastern Command. The elucidation as to why CDA Eastern Command took cognizance of telegraphic communication of 5 Aug. 75 from contractor to insist on issue of additional tender when he had not quoted against the initial tender enquiry are being obtained from CDA and will be submitted at a latter date. As per Army HQ letter No. A/08176/Q/ST6B/Q1(B) of 23 Aug 66, no cognizance is to be taken of telegraphic communication but cognizance by the Executive Officer will be taken of letters duly signed by contractors."

1.162. It is seen from the Audit Paragraph that the overall lowest tender of contractor 'I' of June 1975, being 13.1 per cent lower than the last contract rates, was quite reasonable when compared to current rates of nearby stations and the contractor had also declined to reduce the rate of bread and to increase the rate of skin from Rs. 3 to Rs 8 each. The Committee desired to know the date on which the contractor 'I' was asked to extend the validity of his offer upto 30-11-1975, together with the reasons for not finalising this tender within the validity period of 1-11-1975. The Committee also enquired whether any responsibility has been fixed for this costly delay. In a note, the Ministry of Defence have stated as follows:

"The reasons for delay in finalizing the meat contract for Aijal 1975-76 with in validity period is being investigated through a staff court of inquiry and will be intimated as soon as the proceedings are finalised. The Contractor 'I' was asked to extend his validity upto 30 Nov. 75 through DDST 101 Communication Zone Area telegram No. SHG/MOH/AII/ST5 of 21 Oct. 75."

1.163. It is further seen that on inviting fresh/additional tenders, contractor 'J' had quoted on 6 February, 1976 the rate which was 78 per cent higher than the last contract rates. However, the reduction in rates offered by contractor 'J' on 5 August, 1975 did not materialise and the contract had to be finally concluded with contractor 'K' at rates 7.4 per cent higher than the last contract rates. The Committee desired to know the action taken against contractor

'J' for default. In a note, the Ministry of Defence have stated as follows:

"No legal action can be taken against a contractor if he does not abide to quote lower rates on subsequent tendering as against his earlier offer. In this particular case the offer was made in Aug. 75 and final tendering happened to be in Feb. 76 (a gap of six months)."

1.164. It is seen that failure to finalise the contract with the lowest tenderer on 1st Call and consequent local purchase for the period from 1st October 1975 to 24th March, 1976, at higher rates have resulted in an extra expenditure of Rs. 6.71 lakhs for the period upto 30th September, 1976, as assessed by the Army HQ. The Ministry of Defence, however, informed Audit in December, 1977, as follows:—

"..... the exact loss to the State as a result of non-conclusion of the contract would need to be determined after thorough scrutiny."

1.165. The Committee desired to know whether the extent of loss has been finally determined after thorough scrutiny and also whether Court of Enquiry has been held to pin-point responsibility with regard to the extra expenditure of Rs. 6.71 lakhs and if so, the findings of the enquiry and the action taken for regularisation of the extra expenditure. In a note, the Ministry of Defence have stated as follows:

"From the study at the average local market rates, the contract rates and local purchase rates it will be seen that as against average local market rates of meant on hoof of Rs. 670/- at this station the contract rate of Rs. 521/- and average local purchase rate of Rs. 532/- had been obtained. It, therefore, goes to prove that no loss to the State has actually occurred, if the contract and local purchase rates are viewed in the correct perspective in this very difficult station. However, a staff court of inquiry has been convened to investigate the case and necessary action will be taken on finalization of the court of inquiry, which is in progress at present."

Station 'Y'

1.166. According to the Audit Paragraph, in response to tenders invited (May 1975) for supply of meat for the period October 1975—

September 1976 at the station, the lowest quotation of 7 June 1975) of contractor 'L' was found to be 2.8 per cent higher than the last contract rates. Additional tenders were invited on 21st June 1975 but there was no response. On 3rd call, the lowest quotation of 30th June 1975 of the same contractor 'L' was 0.4 per cent lower than the last contract rates.

1.167. With a view to obtaining more favourable rates, fresh/ additional tenders were issued on 6 different occasions during 12th July—2nd September 1975 but without any response.

1.168. Thereafter, on the advice of the CDA, it was decided to conclude a contract with the lowest tenderer on 3rd call (contractor 'L'). The tenderer, however, resiled on 6th October 1975, from his offer since the date of commencement of supply (1st October 1975) was already over. On being approached, the second lowest tenderer on 3rd call, contractor 'M' also did not respond. Thereafter, additional tenders were invited on 5 different occasions during 22nd October 1975—24th January 1976. The lowest quotation of contractor 'N' of (24th January 1976 was 7.2 per cent higher than the last contract rates. A contract for the period 12th March—30th September 1976 for Rs. 20.78 lakhs) was concluded on 6th March 1976 with contractor 'N'.

1.169. It is seen that in this case tenders were originally received in 1975. Tendering/retendering was resorted to on 14 occasions and the contract finally concluded on 6th March, 1976 with contractor 'N', for the period 12th March—30th September, 1976, was at rates 7.2. per cent higher than the last contract rates as compared to the lowest quotation obtained on 1st call in June, 1975, which was only 2.8 per cent higher than the last contract rate. The Committee desired to know the grounds for retendering/inviting additional tenders on so many occasions without getting more favourable rates. In a note, the Ministry of Defence have stated as follows :

“For meat contract Dahung 1975-76 retendering and additional tenders were done a number of times on the advice of DCDA/CDA till rates achieved were lower than the current contract rates and the value of the contract became—0.4 per cent lower than the current contract rate.”

1.170. The Committee further enquired about the reasons advanced by contractor 'L' for resiling from his offer on 3rd call and also whether the date of commencement of supply had already then over. The Committee also desired to know whether such resiling was

within the validity period of the offer. In a note, the Ministry of Defence have stated as follows:

"The contractor M/S Hind Supply Corporation (Contractor L) in this case resiled on 6 Oct. 75 while the validity of this offer was upto 1 Nov. 75 without assigning any reasons for doing so."

1.171. The Committee further desired to know the amount of earnest money forfeited on account of contractor 'L' resiling from his offer on 6th October, 1975. The Ministry of Defence intimated the Committee as follows:—

"Earnest money amounting to Rs. 28,000 was forfeited as per clause 9 of IAFZ-2137A (the contract deed) when contractor L resiled from his offer on 6 Oct. 75."

1.172. It is further seen that the second lowest tenderer on 3rd call, contractor 'M' was invited to extend the validity of his offer from 1-11-75 to 30-11-75. The Committee desired to know the rate of this offer together with the reasons for which, his offer, which was valid upto 1 November, 1975 could not be finalised in time. In a note, the Ministry of Defence have stated as follows:—

"The second lowest offer of M/s. Mohd. Razuddin (contractor M) on third call was Rs. 991/- for meat dressed and Rs. 488/- for MOH per 100 Kgs. and Rs. 2/- per skin."

1.173. Due to delay in finalisation of the contract, the contractor who quoted lowest rates on 30 June 1975 resiled from his offer on 6 Oct. 75. The second lowest tenderer who was asked to extend the validity from 1 Nov. 75 to 30 Nov. 75 did not respond and a fresh contract was finalised for the period Mar. 76 to Sep. 76. A court of Inquiry has been initiated to investigate the above lapse and pin point responsibility for this lapse.

1.174. According to the Audit Paragraph, failure to finalise a contract with the lowest tenderer on 3rd call and consequent local purchase during the period 1st November, 1975 to 11 March, 1976, at higher rates has resulted in an extra expenditure of Rs. 1.16 lakhs for the period upto 30th September, 1976. The Ministry of Defence intimated Audit in December, 1977 as follows:

"...the loss was due mainly to observance of the contract procedure and tendering/retendering at the instance of the Accounts authorities as well as lowest tenderers resiling from their offers. The Ministry added that the loss would be mitigated to a certain extent due to forfeiture

of earnest money of the tenderers who resiled from their offers."

1.175. The Committee desired to know whether any steps have already been taken to review the existing procedure as according to the Ministry, the loss of Rs. 1.16 lakhs was due to the observance of the procedure. In a note, the Ministry of Defence have stated as follows:

"A Staff Court of Inquiry to fix responsibility for delay in loss conclusion of meat contract Dahung 1975-76 has already been ordered which is nearing finalization.

The contract procedure has been reviewed as explained in para 1.136 above."

1.176. According to the records maintained by the Controller of Defence Accounts, the value of purchases of meat made by the Supply Depots during 1972-73, 1973-74, 1974-75, 1975-76 and 1976-77 was Rs. 2.55 crores, Rs. 2.13 crores, Rs. 5.17 crores, Rs. 3.13 crores and Rs. 4.04 crores respectively. However, according to the figures intimated by the Ministry of Defence to Audit the value of purchases of meat during these years was Rs. 3.00 crores, Rs. 2.75 crores, Rs. 1.45 crores, Rs. 3.63 crores and Rs. 4.31 crores respectively. The Committee are displaced at the wide variations between the figures indicated by the Controller of Defence Accounts and those intimated by the Ministry of Defence to Audit and desire that the Ministry should have these two sets of figures reconciled.

1.177. The Committee note that according to the procedure laid down by the QMG's Branch in May 1968, there was no provision for inviting tenders separately for meat fresh and edible offals. According to the Ministry of Defence, till 1970, the issue of meat fresh throughout India was to be made by calling tenders only for meat fresh including offals which were specified to be edible and were acceptable to the contract operating officer depending on the troops requirements and preference. However, on an inspection by Army Headquarters of Command I in 1968, it was found that, unlike the other Commands, this Command was tendering for dressed meat and offals, separately and were paying higher price for offals than for dressed meat. It was, therefore, suggested by the Army Headquarters Inspecting Officers that this Command should consider falling in line with other Commands. The Committee are unhappy to note that due to Command I following a procedure different from the one followed by the other Commands, this Command had to incur additional expenditure for a long time in purchasing offals at the

rates higher than those for dressed meat. The Committee would like to know the reasons for deviation by this Command from the uniform procedure followed by the other Commands. They would also like to know as to how the Army Headquarters/QMG's Branch ensure that prescribed procedure in such matters is followed uniformly by all the Commands.

1.178. The Committee regret to note that even when the Army Headquarters had suggested to Command I in 1968 to consider falling in line with the other Commands in the matter of procedure for inviting tenders for finalisation of meat contracts, the Command continued till 1971, to follow the procedure of calling quotations separately for 'meat fresh' and certain specified items of edible offals. It was only in the year 1971 that a change was effected in this Command, in the schedule to the tender, which was still not in conformity with the procedure followed in the other Commands, as laid down by the QMG's Branch. According to this modified procedure of 1971, contractors were required to specify rates in two parts—Part I for 'meat fresh' and specified edible offals, and Part II for meat fresh including edible offals. Although in Part II the rate for meat was inclusive of edible offals, there was a clause in the special conditions to the contract which provided that edible offals, such as kidneys, liver, tongue, brain and sweet bread if required, will be taken over for issue at the rate of meat fresh. According to the Ministry, this modification was decided as a result of extensive examination in a meeting held in the office of the Controller of Defence Accounts and in consultation with the Brigadier Army Service Corps of the Command with the object to have comparison of rates of meat with specified offals and that of meat and specified offals separately. Contracts for meat from 1971-72 in this Command were concluded and administered under this modified procedure. Strangely enough, this modified procedure was introduced in Command I from 1971, without consulting the QMG's Branch and even the Legal Authority. Explaining his viewpoint about the failure of the authorities to obtain legal advice with regard to effecting this modification, the Defence Secretary informed the Committee during evidence that "it was not done; it would have been desirable to do so." The Committee can at this stage only deprecate this lapse which proved to be very costly.

1.179. The Committee are perturbed to note that in all the 25 cases pertaining to Command I for the year 1973-74, where the contractors went into litigation, the contracts were awarded on the basis of their quoting the rates in Part II only. It is rather anomalous that the procedure evolved in 1971 for calling rates in two parts was

given a complete go by in all these 25 cases and the contractors quotations in Part II only were approved. The Ministry of Defence have conceded that a comprehensive study could not be made as the contractors did not quote rates for Part I. The Committee would like the Ministry to examine as to how these quotations were considered valid when according to the conditions of tender the parties were required to quote rates in two parts.

1.180. The Committee note that due to the ambiguity in the definition of offals in the special conditions of the contract inserted as a result of modifications made in 1971, the Government lost both the cases in arbitration on disputes arising out of non-acceptance of offals alongwith the supplies of meat by Supply Depots No. 1 and 2 from contractor 'A'. Consequently, Government had to pay huge amounts of Rs. 1.75 lakhs and Rs. 3.99 lakhs (including interest) to the contractor in satisfaction of both these awards. Even the civil court, before whom the award relating to Supply Depot No. 1 was contested, held that there was room for ambiguity in the definition of edible offals in the special condition of the contract. The Defence Secretary also plainly conceded during evidence before the Committee that ".....this clause is not entirely clear. It is somewhat ambiguously worded." The Committee were also informed during evidence that the necessary modifications were made in the tender in the year 1977 to clear the ambiguity as pointed out by the court. But the Defence Secretary assured the Committee that he would take a further look at this 1977 reform to see whether there was need to further improve it. The Committee would like to know the conclusive steps taken in fulfilment of the assurance given by the Defence Secretary to them. The Committee hope that steps envisaged as a result of Defence Secretary's examination would be taken in consultation with the Ministry of Law.

1.181. The Committee note that the court in their decision on the arbitrator's award relating to Supply Depot No. 1 had inter alia observed "....it is rather to be regretted that the Government should have taken the attitude of resisting the award made by the arbitrator who was none other than the Commander of.... Sub Area....Even under.... the general special conditions.... it is the decision of the Sub-Area Commander that is final and binding on both the parties." Further, according to the Ministry, the four cases decided against the Government were adjudicated by Sub-Area Commander who can be said to have direct administrative control over the supply. On an enquiry by the Committee as to why the Sub-Area Commander was then appointed an arbitrator of his own decision, they were informed by the Ministry of Defence through a note that "it would

not be correct to mix the office of Sub-Area Commander with that of the arbitrator as in the first capacity he acts as an administrative authority and in the subsequent capacity he acts as a jurist after divesting himself from all the strings which are attached to his office as an administrator." But subsequently, the representative of the Ministry of Defence clarified during evidence that "in both the cases relating to Supply Depots No. 1 and 2 the arbitrators were different. They were holding the same appointment but different individuals." The Committee believe that this aspect was not put across in the court sufficiently convincingly as otherwise the court would not have observed: "The fact that he gave his decision as the arbitrator and not as a Sub-Area Commander exercising administrative authority does not in reality make the decision any the less than that of the Sub-Area Commander."

1.182. In addition to two cases relating to Supply Depots No. 1 and 2, which have been dealt with in the preceding paragraph, there were 23 more such arbitration cases pertaining to non-acceptance of all offals against 1973-74 meat contracts, relating to other Supply Depots in Command I. The total claims for these cases amounted to Rs. 61.17 lakhs. Out of these 23 cases, two claims for Rs. 2.95 lakhs were awarded against the Government in May 1977 for Rs. 1.05 lakhs. Out of the 13 cases, awards for which went in favour of Government, 2 were subsequently set aside by the court, 8 have been made rule of the court and remaining three have not yet been made rule of the court. As many as five cases are still under arbitration and in respect of remaining 3, claims have not been projected by contractors. What distresses the Committee is the fact revealed in the Audit paragraph that though contractual provisions involved in these disputes as well as submissions by the contractors in all these cases were identical, the awards in two cases were given in favour of the contractor while in 13 cases the awards were in favour of the Government. This only goes to prove that cases were not presented before the arbitrator or the court properly in all cases. As regards the three cases which have not yet been made rule of the court, the Committee desire that the Ministry should take energetic action to secure the rule, so that conclusive action on these cases could be taken.

1.183. The Committee are perturbed to note that the five cases which were referred to arbitration in early 1974 have not been finalised so far when according to the Arbitration Act, awards in the cases should have been given in four months' time. In this connection, the Committee would draw the attention of the Government to their earlier recommendation made in paragraph 3.271 of their

9th Report (Sixth Lok Sabha) on Forest Department, Andamans and reiterated in paragraph 2.41 of their 131st Report (Sixth Lok Sabha) and emphasise once again that suitable measures should be taken to ensure expeditious conclusion of arbitration proceedings within the statutory time limit of 4 months. The Committee also suggest that in case it is felt that the statutory time limit of 4 months is unrealistic, necessary action for amending the law suitably should be taken urgently by the Ministry of Law.

1.84. The Committee note that no guidelines have so far been laid down by the Ministry with regard to the appointment of arbitrators in the disputes relating to the contracts of supplies by the contractors. While emphasising the need for laying down the broad guidelines for the appointment of arbitrators in such disputes, the Committee urge that a person appointed arbitrator should not have had anything to do with the case in his administrative capacity. The Defence Secretary informed the Committee during evidence that "we are also considering whether the present arrangement is satisfactory where the arbitrator writes only 'Accepted' or 'Rejected' and does not explain his decision. This arrangement of the so-called non-speaking order, in our tentative view, is not satisfactory and we are at the moment examining the desirability of laying down that he shall explain the reasons on the basis of which he has given the decision, for the record so that people above have an opportunity to check if he has not acted irresponsibly." In this connection, the Committee would reiterate their earlier recommendation made in paragraph 3.272 of their Ninth Report (Sixth Lok Sabha) on Forest Department, Andamans, that Government should make up its mind and amend the law in such a manner that it would be obligatory on the arbitrator to give reasons for this award. The Committee recommend that conclusive action in this behalf should be taken expeditiously.

1.185. The Committee are deeply concerned to note that due to delay in the finalisation of tenders for the supply of meat in Supply Depots in Command I. Government had to incur quite a substantial amount of additional expenditure both in the shape of contracting at higher rates than those initially tendered and also effecting local purchases of meat at higher rates during the intervening 'no contract' periods. On pursuing the reasons for the delays in contracts relating to some Supply Depots in the Command, the Committee are firmly of the opinion that with proper planning and concerted approach, these delays could have been eliminated and the contracts finalised in time. Some instances of such delays in respect of some Supply Depots for the meat contracts for the period 1 October 1976

to 30 September 1977 and the resultant infructuous expenditure are listed below:

- (i) Contract for Supply Depot No. 1 was concluded with contractor 'A' on additional call on 23 November 1976 and commenced on 29 November 1976. Contractor 'A' did not quote in the initial call. During the 'no contract' period upto 28 November 1976, meat supplies were arranged by effecting local purchase at the average local purchase rates of Rs. 835 per 100 kgs. An approximate additional expenditure of Rs. 1,10,160 and Rs. 1,92,780 as compared to the previous and future contract rate of Rs. 767 and Rs. 715.80 respectively was incurred.
- (ii) The contract for Supply Depot No. 2 was concluded with contractor 'A' at Rs. 934.80 per 100 kgs. on 29 January 1977 as the authorities could not give timely acceptance to the offers of Rs. 727 of contractor 'D' and Rs. 734 of contractor 'C'. This has resulted in additional extra expenditure of Rs. 6.16 lakhs by way of increased rate and Rs. 1.40 lakhs on account of local purchases made from contractor 'A' itself.
- (iii) Contract for Supply Depot No. 3 was awarded to contractor 'A' for the period 9.12.1976 to 30.9.1977 at the rate of Rs. 737 per 100 kgs. as a result of third call when a tenderer had quoted Rs. 625 per 100 kgs. in August 1976 in response to first call, but it could not be accepted before the date of commencement of the supplies. Contractor 'A' did not quote in the earlier calls.
- (iv) Contract for Supply Depot No. 4 was awarded to contractor 'B' at the rate of Rs. 786 per 100 kgs. as a result of second tender floated in January 1977, as the authorities could not give timely acceptance to the quotation of August 1976 for Rs. 687 from contractor 'F' and later on reduce to Rs. 611 on 10 September 1976 as a result of negotiations. The delay has resulted in an extra expenditure of Rs. 4.92 lakhs.

This delay is more serious in view of the fact that while seeking approval of the QMG on 13 October 1976, the Command HQ had clearly indicated that the offer was valid upto 1 November 1976. But the tender was approved by QMG only on 3 November 1976 after the expiry of the validity of offer.

- (v) The contract for Supply Depot No. 5 was finalised with contractor 'B' at the rate of Rs. 795 per 100 kgs. only for the period 16.4.1977 to 30.9.1977 due to delay in not giving timely approval to the negotiated rate of Rs. 670 per 100 kgs.; negotiated on fourth call with contractor 'G', resulting in extra expenditure of Rs. 3.04 lakhs.

1.186. The Committee are unhappy to note that the instructions issued by Ministry of Defence in August 1971 that the administrative authorities should take all possible steps to obviate delays in finalising contracts so as to avoid consequential loss to the Government have had no effect on the authorities concerned and delays continue to occur causing irreparable loss to the public exchequer. The Committee have been informed that recently the Ministry have evolved a procedure which will be tried on experimental basis for two years to overcome delays in the finalisation of such contracts. According to this procedure the tenders are to be jointly examined by a panel of officers comprising Executive Officer and representatives of CFA and CDA. The Committee would impress upon the authorities to closely watch the practical working of this procedure with a view to further improving the procedure, if necessary, in the light of experience.

1.187. The Committee also find that the finalisation of the contracts was largely delayed due to tendering and retendering again and again. According to the Ministry of Defence, this malady as it stands today is also under examination in consultation with legal and financial advisers. The Committee hope that this examination will be finalised urgently with a view to evolving suitable procedures. The Committee would like to be apprised of the action taken in this regard.

1.188. From the perusal of the details of a number of contracts highlighted in the Audit paragraph, relevant information furnished and evidence tendered before the Committee, the Committee have formed an impression that contractor 'A' has enjoyed a monopoly position in the field of supply of meat to the Army. The Committee would like the Ministry to probe whether this position has been acquired by contractor 'A' by any unfair means in collusion with unscrupulous elements in the official hierarchy.

1.189. The Committee are distressed over an instance of gross negligence on the part of the authorities dealing with a contract for supply of meat to Supply Depot No. 6 for 1973-74 valuing Rs. 18.38

lakhs. According to the conditions of supply, contractors are required to maintain at all times a reserve of animals of not less than 3 days' supply in the depot butchery based on the average number of animals slaughtered daily. As contractor 'H' failed to maintain the stipulated reserve, the depot authorities suo moto, without any request having been made by the contractor, purchased as many as 2541 animals, costing Rs. 2.98 lakhs, and handed them over to the contractor for slaughter, even without obtaining a formal receipt in this behalf from the contractor. According to the Ministry, this purchase was made under the risk and expense clause in the contract. The Committee consider that the Department had gone quite out of way to purchase such a large number of animals, on behalf of the contractor,

1.90. What appears to be still more irregular is the fact that the value of the animals handed over to the contractor was not recovered from him and payment of his claim was made in February 1976. In addition, the contractor derived additional irregular advantage of Rs. 0.76 lakh by selling skins and offals of the animals purchased by the Department. The contractor obtained in December 1973, court orders to refer the question of non-acceptance of edible offals of the animals slaughtered to arbitration, including the attendant risk and expense purchases and for stay against the recovery of Government claims. According to the Ministry, the payment was made to the contractor as he threatened to launch contempt of court proceedings. The restraint by the court against withholding of payment of bills was because the contractor was under obligation to make supplies till March 1974 and he might have suffered irreparable injury if his bills were withheld. This highlights the Ministry's own lapse, as they failed to take timely action to rescind the contract even when the CDA had advised in November 1973 for rescission of the contract but the contract was ultimately rescinded on 5 March 1974 when only a few days' were left for its completion.

1.191. The Committee have been informed that this case has since been adjudicated by the arbitrator and a sum of Rs. 5.93 lakhs, which includes cost of animals, has been awarded in favour of the Government. The award has not yet been made rule of the court. The Committee would like the Ministry to take urgent necessary action for obtaining rule of the court on this award and thereafter to secure realisation of the amount awarded from the contractor.

1.192. The Committee regret to note yet another costly lapse connected with the aforesaid contract for Supply Depot 6 with contractor 'H'. About a year after the rescission of the contract, the

contractor represented in February 1975 that as a control order governing meat price was in force with effect from 16 August, 1973, payment for his supplies for the period 16 August, 1973 onwards be made at Control Order rates. Strangely enough, the contractor was paid an amount of Rs. 1.75 lakhs in March 1976 on account of the difference between the contract rate and the maximum stipulated in the control order. The Committee consider this to be highly irregular as the control order had stipulated the ceiling for the maximum of price and not the floor price.

1.193. According to the Ministry, the payment was made by them on the basis of the legal advice. The Committee fail to understand the need for referring the matter again to the Ministry of Law, when the Assistant Legal Adviser to the Government of India, Bombay, Ministry of Law had earlier opined that the contract rate was not violative of the control order and the question of making additional payment to the contractor did not arise. Even the legal opinion subsequently given by the Solicitor to the Government of India, on the basis of which the additional payment of Rs. 1.75 lakhs was made did not warrant such an action as it only stated "If there is a control order in force, the price shall be the maximum fixed under the control order in force at the time of delivery". In the Committee's view, it simply explains the significance of the control order, which stipulates the fixation of ceiling price. The Committee fail to understand as to how the Ministry interpreted the legal advice of the Solicitor to authorise them to make a payment of Rs. 1.75 lakhs. That this action of the Ministry was not justified is borne out by the rejection subsequently of another claim of the same contractor for Rs. 0.22 lakh being the difference between the price paid for the eggs supplies and the price fixed under the control order, in consultation with the Legal Adviser (Defence) and the Solicitor to the Government of India. In view of the fact that Government are advised that the claim for recovery of the excess amount paid to the contractor would not be maintainable in court, the Committee can only deprecate this costly lapse on the part of the Government.

1.194. The Committee regret to note yet another case of heavy extra expenditure of Rs. 6.71 lakhs incurred by the Department due to delay in the finalisation of a contract within the validity period of 1-11-1975 for the supply of meat/poultry/eggs/bread for the period October 1975 to September 1976 for station 'X' of Command II. The reasons for delay are stated to be under investigation through a staff court of enquiry. The Committee would like to know the outcome of this enquiry and action taken thereon. This

case brings to light yet another irregularity where a suggestion was made by CDA for the issue of an additional tender to a contractor who had not tendered against original tender enquiry but subsequently offered telegraphically to quote lower rate. According to the rules, no cognizance of telegraphic communication can be taken. The Committee are informed that CDA's views in this behalf are being obtained. The Committee would like to know these views alongwith Ministry's comments thereon.

1.195. The Committee are unhappy to find yet another case of delay in the finalisation of a meat contract for the period October 1975 to September 1976 for station 'Y' of Command II. In this case, though the lowest quotation of contractor 'T', in response to tenders invited in May 1975 was only 2.8 per cent higher than the last contract rates, tendering/retendering was resorted to on 14 occasions and the contract finally concluded on 6 March 1976 for the period 12 March to 30 September 1976, was at rates 72 per cent higher than the last contract rates, resulting in an extra expenditure of Rs. 1.16 lakhs. The Committee are informed that a staff court of inquiry ordered in this case to fix responsibility for this delay is in progress. The Committee would like to know the result of this inquiry and action taken thereon.

NEW DELHI;
April 25, 1979
Vaisakha 5, 1901 (S).

P. V. NARASIMHA RAO,
Chairman,
Public Accounts Committee.

APPENDIX

CONCLUSION OR RECOMMENDATIONS

Sl. No.	Para No.	Ministry/Department concerned	Recommendation
(1)	(2)	(3)	(4)
1.	1.176	Ministry of Defence	<p>According to the records maintained by the Controller of Defence Accounts, the value of purchases of meat made by the Supply Depots during 1972-73, 1973-74, 1974-75, 1975-76 and 1976-77 was Rs. 2.55 crores, Rs. 2.13 crores, Rs. 5.17 crores, Rs. 3.13 crores and Rs. 4.04 crores respectively. However, according to the figures intimated by the Ministry of Defence to Audit the value of purchases of meat during these years was Rs. 3.00 crores, Rs. 2.75 crores, Rs. 1.45 crores, Rs. 3.63 crores and Rs. 4.31 crores respectively. The Committee are displeased at the wide variations between the figures indicated by the Controller of Defence Accounts and those intimated by the Ministry of Defence to Audit and desire that the Ministry should have these two sets of figures reconciled.</p>

(1)	(2)	(3)	(4)
2.	1.177	Ministry of Defence	<p>The Committee note that according to the procedure laid down by the QMG's Branch in May 1968, there was no provision for inviting tenders separately for meat fresh and edible offals. According to the Ministry of Defence, till 1970, the issue of meat fresh throughout India was to be made by calling tenders only for meat fresh including offals which were specified to be edible and were acceptable to the contract operating officer depending on the troops requirements and preference. However, on an inspection by Army Headquarters of Command I in 1968, it was found that, unlike the other Commands, this Command was tendering for dressed meat and offals, separately and were paying higher price for offals than for dressed meat. It was, therefore, suggested by the Army Headquarters Inspecting Officers that this Command should consider falling in line with other Commands. The Committee are unhappy to note that due to Command I following a procedure different from the one followed by the other Commands, this Command had to incur additional expenditure for a long time in purchasing offals at the rates higher than those for dressed meat. The Committee would like to know the reasons for deviation by this Command from the uniform procedure followed by the other Commands. They would also like to know as to how the Army Headquarters/QMG's Branch ensure that prescribed procedure in such matters is followed uniformly by all the Commands.</p>
3.	1.178	Do.	<p>The Committee regret to note that even when the Army Headquarters had suggested to Command I in 1968 to consider falling in</p>

line with the other Commands in the matter of procedure for inviting tenders for finalisation of meat contracts, the Command continued till 1971, to follow the procedure of calling quotations separately for 'meat fresh' and certain specified items of edible offals. It was only in the year 1971 that change was effected in this Command, in the schedule to the tender, which was still not in conformity with the procedure followed in the other Commands, as laid down by the QMG's Branch. According to this modified procedure of 1971, contractors were required to specify rates in two parts—Part I for 'meat fresh' and specified edible offals, and Part II for meat fresh including edible offals. Although in Part II the rate for meat was inclusive of edible offals, there was a clause in the special conditions to the contract which provided that edible offals, such as kidneys, liver, tongue, brain and sweet bread if required, will be taken over for issue at the rate of meat fresh. According to the Ministry, this modification was decided as a result of extensive examination in a meeting held in the office of the Controller of Defence Accounts and in consultation with the Brigadier Army Service Corps of the Command with the object to have comparison of rates of meat with specified offals and that of meat and specified offals separately. Contracts for meat from 1971-72 in this Command were concluded and administered under this modified procedure. Strangely enough, this modified procedure was introduced in Command I from 1971, without consulting the QMG's Branch and even the Legal Authority. Explaining his viewpoint about the failure of the authorities to obtain legal advice with regard to effecting this modification, the Defence Secretary informed the Committee during evidence that "it

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was not done; it would have been desirable to do so." The Committee can at this stage only deprecate this lapse which proved to be very costly.

The Committee are perturbed to note that in all the 25 cases pertaining to Command I for the year 1973-74, where the contractors went into litigation, the contracts were awarded on the basis of their quoting the rates in Part II only. It is rather anomalous that the procedure evolved in 1971 for calling rates in two parts was given a complete go by in all these 25 cases and the contractors quotations in Part II only were approved. The Ministry of Defence have conceded that a comprehensive study could not be made as the contractors did not quote rates for Part I. The Committee would like the Ministry to examine as to how these quotations were considered valid when according to the conditions of tender the parties were required to quote rates in two parts.

The Committee note that due to the ambiguity in the definition of offals in the special conditions of the contract inserted as a result of modifications made in 1971, the Government lost both the cases in arbitration on disputes arising out of non-acceptance of offals along with the supplies of meat by Supply Depots No. 1 and 2 from contractor 'A'. Consequently, Government had to pay huge amounts of Rs. 1.75 lakhs and Rs. 3.99 lakhs (including interest) to the contractor in satisfaction of both these awards. Even the civil court, before

Ministry of Defence

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whom the award relating to Supply Depot No. 1 was contested, held that there was room for ambiguity in the definition of edible offals in the special condition of the contract. The Defence Secretary also plainly conceded during evidence before the Committee that "...this clause is not entirely clear. It is somewhat ambiguously worded." The Committee were also informed during evidence that the necessary modifications were made in the tender in the year 1977 to clear the ambiguity as pointed out by the court. But the Defence Secretary assured the Committee that he would take a further look at this 1977 reform to see whether there was need to further improve it. The Committee would like to know the conclusive steps taken in fulfilment of the assurance given by the Defence Secretary to them. The Committee hope that steps envisaged as a result of Defence Secretary's examination would be taken in consultation with the Ministry of Law.

6. 1.181 Ministry of Defence

The Committee note that the court in their decision on the arbitrator's award relating to Supply Depot No. 1 had *inter alia* observed "... it is rather to be regretted that the Government should have taken the attitude of resisting the award made by the arbitrator who was none other than the Commander of..... Sub Area.... Even under the general special conditions..... it is the decision of the Sub-Area Commander that is final and binding on both the parties." Further, according to the Ministry, the four cases decided against the Government were adjudicated by Sub-Area Commander who can be said to have direct administrative control over the supply. On an enquiry by the Committee as to why the Sub-

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Area Commander was then appointed an arbitrator of his own decision, they were informed by the Ministry of Defence through a note that "it would not be correct to mix the office of Sub-Area Commander with that of the arbitrator as in the first capacity he acts as an administrative authority and in the subsequent capacity he acts as a jurist after divesting himself from all the strings which are attached to his office as an administrator." But subsequently, the representative of the Ministry of Defence clarified during evidence that "in both the cases relating to Supply Depots No. 1 and 2 the arbitrators were different. They were holding the same appointment but different individuals." The Committee believe that this aspect was not put across in the court sufficiently convincingly as otherwise the court would not have observed: "The fact that he gave his decision as the arbitrator and not a Sub-Area Commander exercising administrative authority does not in reality make the decision any the less than that of the Sub-Area Commander."

In addition to two cases relating to Supply Depots No. 1 and 2, which have been dealt with in the preceding paragraph, there were 23 more such arbitration cases pertaining to non-acceptance of all offers against 1973-74 meat contracts, relating to other Supply Depots in Command I. The total claims for these cases amounted to Rs. 61.17 lakhs. Out of these 23 cases, two claims for Rs. 2.95 lakhs were awarded against the Government in May 1977 for Rs. 1.05

Ministry of Defence

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lakhs. Out of the 13 cases, awards for which went in favour of Government, 2 were subsequently set aside by the court, 8 have been made rule of the court and remaining three have not yet been made rule of the court. As many as five cases are still under arbitration and in respect of remaining 3, claims have not been projected by contractors. What distresses the Committee is the fact revealed in the Audit paragraph that though contractual provisions involved in these disputes as well as submissions by the contractors in all these cases were identical, the awards in two cases were given in favour of the contractor while in 13 cases the awards were in favour of the Government. This only goes to prove that cases were not presented before the arbitrator or the court properly in all cases. As regards the three cases which have not yet been made rule of the court, the Committee desire that the Ministry should take energetic action to secure the rule, so that conclusive action on these cases could be taken.

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The Committee are perturbed to note that the five cases which were referred to arbitration in early 1974 have not been finalised so far when according to the Arbitration Act, awards in the cases should have been given in four months' time. In this connection, the Committee would draw the attention of the Government to their earlier recommendation made in paragraph 3.271 of their 9th Report (Sixth Lok Sabha) on Forest Department, Andamans and reiterated in paragraph 2.41 of their 131st Report (Sixth Lok Sabha) and emphasise once again that suitable measures should be taken to ensure expeditious conclusion of arbitration proceedings within the

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9.	1.184	Ministry of Defence	<p>statutory time limit of 4 months. The Committee also suggest that in case it is felt that the statutory time limit of 4 months is unrealistic, necessary action for amending the law suitably should be taken urgently by the Ministry of Law.</p> <p>The Committee note that no guidelines have so far been laid down by the Ministry with regard to the appointment of arbitrators in the disputes relating to the contracts of supplies by the contractors. While emphasising the need for laying down the broad guidelines for the appointment of arbitrators in such disputes, the Committee urge that a person appointed arbitrator should not have had anything to do with the case in his administrative capacity. The Defence Secretary informed the Committee during evidence that "we are also considering whether the present arrangement is satisfactory where the arbitrator writes only 'accepted' or 'Rejected' and does not explain his decision. This arrangement of the so-called non-speaking order, in our tentative view, is not satisfactory and we are at the moment examining the desirability of laying down that he shall explain the reasons on the basis of which he has given the decision, for the record so that people above have an opportunity to check if he has not acted irresponsibly." In this connection, the Committee would reiterate their earlier recommendations made in paragraph 3.272 of their Ninth Report (Sixth Lok Sabha) on Forest Department, Andamans, that Government should</p>

make up its mind and amend the law in such a manner that it would be obligatory on the arbitrator to give reasons for his award. The Committee recommend that conclusive action in this behalf should be taken expeditiously.

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The Committee are deeply concerned to note that due to delay in the finalisation of tenders for the supply of meat in Supply Depots in Command I, Government had to incur quite a substantial amount of additional expenditure both in the shape of contracting at higher rates than those initially tendered and also effecting local purchases of meat at higher rates during the intervening 'no contract' periods. On perusing the reasons for the delays in contracts relating to some Supply Depots in the Command, the Committee are firmly of the opinion that with proper planning and concerted approach, these delays could have been eliminated and the contracts finalised in time. Some instances of such delays in respect of some Supply Depots for the meat contracts for the period 1 October 1976 to 30 September 1977 and the resultant infructuous expenditure are listed below :

- (i) Contract for Supply Depot No. 1 was concluded with contractor 'A' on additional call on 23 November 1976 and commenced on 29 November 1976. Contractor 'A' did not quote in the initial call. During the 'no contract' period upto 28 November 1976, meat supplies were arranged by effecting local purchase at the average local purchase rate of Rs. 835 per 100 kgs. An approximate additional expenditure of Rs. 1,10,160 and Rs. 1,92,780 as compared to the

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previous and future contract rate of Rs. 767 and Rs. 715.80 respectively was incurred.

(ii) The contract for Supply Depot No 2 was concluded with contractor 'A' at Rs. 934.80 per 100 kgs. on 29 January 1977 as the authorities could not give timely acceptance to the offers of Rs. 727 of contractor 'D' and Rs. 734 of contractor 'C'. This has resulted in additional extra expenditure of Rs. 6.16 lakhs by way of increased rate and Rs. 1.40 lakhs on account of local purchases made from contractor 'A' itself.

(iii) Contract for Supply Depot No. 3 was awarded to contractor 'A' for the period 9-12-1976 to 30.9.1977 at the rate of Rs. 737 per 100 kgs. as a result of third call when a tenderer had quoted Rs. 625 per 100 kgs. in August 1976 in response to first call, but it could not be accepted before the date of commencement of the supplies. Contractor 'A' did not quote in the earlier calls.

(iv) Contract for Supply Depot No. 4 was awarded to contractor 'B' at the rate of Rs. 786 per 100 kgs. as a result of second tender floated in January 1977, as the authorities could not give timely acceptance to the quotation of August 1976 for Rs. 687 from contractor 'F' and later on reduced to Rs. 611 on 10 September 1976 as a result of

negotiations. The delay has resulted in an extra expenditure of Rs. 4.92 lakhs.

This delay is more serious in view of the fact that while seeking approval of the QMG on 13 October 1976, the Command HQ had clearly indicated that the offer was valid upto 1 November 1976. But the tender was approved by QMG only on 3 November 1976 after the expiry of the validity of offer.

- (v) The contract for Supply Depot No. 5 was finalised with contractor 'B' at the rate of Rs. 795 per 100 kgs. only for the period 16.4.1977 to 30.9.1977 due to delay in not giving timely approval to the negotiated rate of Rs. 670 per 100 kgs.; negotiated on fourth call with contractor 'G', resulting in extra expenditure of Rs. 3.04 lakhs.

The Committee are unhappy to note that the instructions issued by Ministry of Defence in August 1971 that the administrative authorities should take a possible steps to obviate delays in finalising contracts so as to avoid consequential loss to the Government have had no effect on the authorities concerned and delays continue to occur causing irreparable loss to the public exchequer. The Committee have been informed that recently the Ministry have evolved a procedure which will be tried on experimental basis for two years to overcome delays in the finalisation of such contracts, According to this procedure the tenders are to be jointly examined by a panel of

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officers comprising of Executive Officer and representatives of CFA and CDA. The Committee would impress upon the authorities to closely watch the practical working of this procedure with a view to further improving the procedure, if necessary, in the light of experience.

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The Committee also find that the finalisation of the contracts was largely delayed due to tendering and retendering again and again. According to the Ministry of Defence, this malady as it stands today is also under examination in consultation with legal and financial advisers. The Committee hope that this examination will be finalised urgently with a view to evolving suitable procedures. The Committee would like to be apprised of the action taken in this regard.

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From the perusal of the details of a number of contracts highlighted in the Audit paragraph, relevant information furnished and evidence tendered before the Committee, the Committee have formed an impression that contractor 'A' has enjoyed a monopoly position in the field of supply of meat to the Army. The Committee would like the Ministry to probe whether this position has been acquired by contractor 'A' by any unfair means in collusion with unscrupulous elements in the official hierarchy.

The Committee are distressed over an instance of gross negligence on the part of the authorities dealing with a contract for supply of meat to Supply Depot No. 6 for 1973-74 valuing Rs. 18.38 lakhs. According to the conditions of supply, Contractors are required to maintain at all times a reserve of animals of not less than 3 days' supply in the depot butchery based on the average number of animals slaughtered daily. As contractor 'H' failed to maintain the stipulated reserve, the depot authorities *suo moto*, without any request having been made by the contractor, purchased as many as 2541 animals, costing Rs. 2.98 lakhs and handed them over to the contractor for slaughter, even without obtaining a formal receipt in this behalf from the contractor. According to the Ministry, this purchase was made under the risk and expense clause in the contract. The Committee consider that the Department had gone quite out of way to purchase such a large number of animals, at a time, on behalf of the contractor.

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What appears to be still more irregular is the fact that the value of the animals handed over to the contractor was not recovered from him and payment of his claim was made in February 1976. In addition, the contractor derived additional irregular advantage of Rs. 0.76 lakh by selling skins and offals of the animals purchased by the Department. The contractor obtained in December 1973, court orders to refer the question of non-acceptance of edible offals of the animals slaughtered to arbitration, including the attendant risk and expense purchases and or stay against the recovery of Government claims. According to the Ministry, the payment was made to the

contractor as he threatened to launch contempt of court proceedings. The restraint by the court against withholding of payment of bills was because the contractor was under obligation to make supplies till March 1974 and he might have suffered irreparable injury if his bills were withheld. This highlights the Ministry's own lapse, as they failed to take timely action to rescind the contract even when the CDA had advised in November 1973 for rescission of the contract but the contract was ultimately rescinded on 5 March 1974 when only a few days' were left for its completion.

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The Committee have been informed that this case has since been adjudicated by the arbitrator and a sum of Rs. 5.93 lakhs, which includes cost of animals, has been awarded in favour of the Government. The award has not yet been made rule of the court. The Committee would like the Ministry to take urgent necessary action for obtaining rule of the court on this award and thereafter to secure realisation of the amount awarded from the contractor.

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The Committee regret to note yet another costly lapse connected with the aforesaid contract for Supply Depot 6 with contractor 'H'. About a year after the rescission of the contract, the contractor re-presented in February 1975 that as a control order governing meat price was in force with effect from 16 August 1973, payment for his supplies for the period 16 August 1973 onwards be made at control order rates. Strangely enough, the contractor was paid an amount

of Rs. 1.75 lakhs in March 1976 on account of the difference between the contract rate and the maximum stipulated in the control order. The Committee consider this to be highly irregular as the control order had stipulated the ceiling for the maximum of price and not the floor price.

According to the Ministry, the payment was made by them on the basis of the legal advice. The Committee fail to understand the need for referring the matter again to the Ministry of Law, when the Assistant Legal Adviser to the Government of India, Bombay, Ministry of Law had earlier opined that the contract rate was not violative of the control order and the question of making additional payment to the contractor did not arise. Even the legal opinion subsequently given by the Solicitor to the Government of India, on the basis of which the additional payment of Rs. 1.75 lakhs was made did not warrant such an action as it only stated "If there is a control order in force, the price shall be the maximum fixed under the control order in force at the time of delivery". In the Committee's view, it simply explains the significance of the control order, which stipulates the fixation of ceiling price. The Committee fail to understand as to how the Ministry interpreted the legal advice of the Solicitor to authorise them to make a payment of Rs. 1.75 lakhs. That this action of the Ministry was not justified is borne out by the rejection subsequent of another claim of the same contractor for Rs. 0.22 lakh being the difference between the price paid for the eggs supplied and the price fixed under the control order, in consultation

with the Legal Adviser (Defence) and the Solicitor to the Government of India. In view of the fact that Government are advised that the claim for recovery of the excess amount paid to the contractor would not be maintainable in court, the Committee can only deprecate this costly lapse on the part of the Government.

The Committee regret to note yet another case of heavy extra expenditure of Rs. 6.71 lakhs incurred by the Department due to delay in the finalisation of a contract within the validity period of 1-11-1975 for the supply of meat|poultry|eggs|bread for the period October 1975 to September 1976 for station 'X' of Command II. The reasons for delay are stated to be under investigation through a staff court of enquiry. The Committee would like to know the outcome of this enquiry and action taken thereon. This case brings to light yet another irregularity where a suggestion was made by CDA for the issue of an additional tender to a contractor who had not tendered against original tender enquiry but subsequently offered telegraphically to quote lower rate. According to the rules, no cognizance of telegraphic communication can be taken. The Committee are informed that CDA's views in this behalf are being obtained. The Committee would like to know these views alongwith Ministry's comments thereon.

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The Committee are unhappy to find yet another case of delay in the finalisation of a meat contract for the period October 1975 to September 1976 for station 'Y' of Command III. In this case, though the lowest quotation of contractor 'I', in response to tenders invited in May 1975 was only 2.8 per cent higher than the last contract rates, tendering/tendering was resorted to on 14 occasions and the contract finally concluded on 6 March 1976 for the period 12 March to 30 September 1976, was at rates 7.2 per cent higher than the last contract rates, resulting in an extra expenditure of Rs. 1.16 lakhs. The Committee are informed that a staff court of inquiry ordered in this case to fix responsibility for this delay is in progress. The Committee would like to know the result of this inquiry and action taken thereon.
