



United Nations
Educational, Scientific and
Cultural Organization

Executive Board

Hundred and seventy-sixth session

176 EX/39

PARIS, 16 March 2007
Original: French

Item 39 of the provisional agenda

REPORT BY THE EXTERNAL AUDITOR ON THE PROCEDURES USED TO HIRE CONSULTANTS FOR THE RESTRUCTURING OF THE EDUCATION SECTOR

SUMMARY

In conformity with 175 EX/Decision 5, the External Auditor is presenting to the Executive Board his report on the procedures used to hire consultants for the restructuring of the Education Sector.

Cour des Comptes

**Auditor-General of France
External Auditor of UNESCO**

Paris, 19 February 2007

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Sir/Madam,

At your 175th session (26 September-13 October 2006), and by virtue of Article 12.6 of the Financial Regulations, you noted “that derogations from normal contractual practice were granted in order to hire consultants to expedite the restructuring of the Education Sector” and requested that we “report to (the Board) no later than at its 177th session on the procedures used to hire consultants for the restructuring of the Education Sector”.¹

The report submitted to you herewith was drawn up in response to that request. It describes and analyses the procedures used to award contracts for the restructuring of the Education Sector. Pursuant to Articles 12.4 and 12.5 the Financial Regulations, we have also provided background information when deemed necessary and made recommendations.

Accept, Sir/Madam, the assurances of my highest consideration.

[signed]

Philippe Séguin

To the Members of the Executive Board

¹ Paragraph 5 of 175 EX/Decision 5.

**EXTERNAL AUDITOR OF THE UNITED NATIONS EDUCATIONAL,
SCIENTIFIC AND CULTURAL ORGANIZATION**

REPORT

**on the procedures used to hire consultants for the restructuring
of the Education Sector**

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EXECUTIVE SUMMARY

The scope of the audit covers a series of seven fee contracts concluded with the firm Navigant Consulting since June 2005 to support the action of the Assistant Director-General for Education (ADG/ED) and amounting to a total of \$2.15 million. An eighth contract, amounting to \$1.1 million, was initially planned by the Assistant Director-General for Education. To date, 88% of the funds for the contracts have come from the regular programme. The use of extrabudgetary funds, currently being transferred, will lower the percentage of the total funded by the regular programme to 59%.

UNESCO's procurement procedures in respect of amounts in excess of \$100,000 require competitive bidding by contractors, negotiation of fees and subsequent monitoring of contract performance.

On the initiative of the Assistant Director-General for Education (ADG/ED), Navigant Consulting was selected without competitive bidding. The information contained in the report leads to the finding that Navigant Consulting was given preferential treatment and that the Organization's procedures and regulations were not followed. Navigant Consulting's stated field of specialization is the provision of consulting services in financial and legal matters in compensation litigation, and the reasons for its selection – other than the personal experience of the head of the Navigant team – are not immediately apparent. The restricted bidding procedure followed in October was conducted in a way that rendered it ineffective. The information transmitted to the Contracts Committee and to the Deputy Director-General in support of the request for approval of the outcome of the bidding procedure was incomplete. The fees payable on the various contracts were not negotiated in any verifiable manner. The Office of International Standards and Legal Affairs was the only body that persistently pointed to the difficulties of principle raised by the conclusion of the contracts. The items of the UNESCO Administrative Manual that were not observed (Items 700, 326 and 1025) are rules (competition and price negotiation) that protect the Organization and are indispensable in managing the compulsory and voluntary contributions of Member States.

The firm undertook work on which the Assistant Director-General for Education based decisions taken to reform the Sector. He has expressed great satisfaction with the work carried out. In view of the budget available for the funding of activities, the cost already incurred by the Organization in finalizing the reform of the Education Sector is high (\$2.1 million). However, the purpose of this report is not to evaluate the content of the reform and the choices made.

Lastly, the report states that the Director-General's authority to waive the rules of advertising, understood in its broader sense, is regulated by the Administrative Manual and is not an arbitrary power. It may not be exercised outside the clearly stated procedure or outside the circumstances determined by the Director-General himself in the Administrative Manual and it requires observance of the general principles of law. This procedure requires review by a collegial body. The approval of contracts by an official at a higher supervisory level is not tantamount to granting a valid departure from the rules under the Financial Regulations of the Organization. It seems that the Manual must be clarified on this point.

SCOPE AND METHOD OF THE AUDIT

At its 175th session, the Executive Board of UNESCO noted that “derogations from normal contractual practice were granted in order to hire consultants to expedite the restructuring of the Education Sector” and requested “the External Auditor to report to it no later than at its 177th session on the procedures used to hire consultants for the restructuring of the Education Sector”.¹ The Auditor was then requested to examine the procedures followed by the Organization in hiring consultants for the reform of the Education Sector.

The first step was to identify all the consultant contracts concluded by the Education Sector for its reform. These contracts – and the selection procedures applied – constitute the scope of the audit requested by the Executive Board.

It was then necessary to put the contracts into perspective, in the wider context of contractors providing intellectual services to UNESCO. In order to take into account the Executive Board’s reference to derogations from normal contractual practice, the context in which waivers are granted in the awarding of contracts (1) has been established so that the contracts may be put into perspective. The normal procedure applicable to the selection of consultants and to the procurement of intellectual services by the Organization has been identified (2). The procedures followed in the case of the Education Sector consultants have then been reviewed in chronological order (3) and the extent to which such action complied with the applicable procedure has been analysed (4). Finally, observations and recommendations have been made on the basis of this information and the analysis conducted (5).

The audit was notified to the Director-General by a letter dated 19 October 2006. The documents relating to the contracts and to the work done by the consultants had been collected by the end of October and interviews were held, first with the Assistant Director-General for Education (ADG/ED) and the members of his team, and then with the persons and departments concerned (Administrative Officer, members of the Contracts Committee and the Office of International Standards and Legal Affairs). In reply to the question raised by the Executive Board, account has been taken of Article 12.4 of the Financial Regulations, which provides that the “External Auditor may make observations with respect to the efficiency of the financial procedures, the accounting system, the internal financial controls and in general the administration and management of the Organization”.

¹ Paragraph 5 of 175 EX/Decision 5.

1. DESCRIPTION OF THE SCOPE AND PERSPECTIVE OF THE AUDIT

1.1 LIST OF EDUCATION SECTOR CONTRACTS FALLING WITHIN THE SCOPE OF THE AUDIT

1. The scope of the audit covered seven contracts concluded with the firm Navigant Consulting. The seven contracts and their main features are summarized below.

Table No. – 1 Table summarizing the content of the contracts

Number of contract and total amount	Date of contract	Date planned for deliverables and payments	Amount of payments	Payment claim	Payment stages as set out in the text of the contract
Contract (No. 1) No. 4500024765 \$ 99 871	23/06/2005	05/07/2005	\$33,290	13/07/2005	<i>Interview guide</i>
		16/07/2005	\$33,290	21/07/2005	<i>Interviews completed</i>
		20/07/2005	\$33,291	21/07/2005	<i>Final Payment – Findings report</i>
Contract (No. 2) No. 4500025476 \$96,002	26/07/2005	24/07/2005	\$32,000	26/07/2005	<i>Payment facilitation leadership retreat 22 - 24/07/2005</i>
		24/08/2005	\$32,000	22/09/2005	<i>Preparation Bangkok meeting</i>
		13/09/2005	\$32,002	22/09/2005	<i>Findings report and draft management framework</i>
Contract (No. 3) No. 4500026337 \$99,899	12/09/2005	15/10/2005	\$50,000	25/10/2005	<i>Meetings with external stakeholders</i>
		31/10/2005	\$49,899	31/10/2005	<i>Summation report</i>
Contract (No. 4) No. 4500027678 \$99,899	03/11/2005	15/11/2005	\$49,899	22/12/2005 SAP 17/11	<i>Presentation of report at ED seminar</i>
		30/11/2005	\$50,000	13/12/2005 SAP 25/11	<i>Final Payment</i>
Contract No. 5 No. 4500028835 \$800,000	09/12/2005	31/12/2005	\$400,000	03/01/2006	<i>New organizational structure</i>
		31/03/2006	\$400,000	04/04/2006	<i>Organization management task Personal management task Information management task Budget and planning task Project management and ongoing support ADG/ED</i>

Number of contract and total amount	Date of contract	Date planned for deliverables and payments	Amount of payments	Payment claim	Payment stages as set out in the text of the contract
Contract No. 6 No. 4500031016 \$400,000	19/04/2006	31/07/2006	\$400,000	31/07/2006	<i>Global payment Undertake the remaining tasks of contract No. 4500028835 – analysis of strategic objectives – develop a reform implementation model – facilitate work session – conduct extensive review of regional office staffing and assistance in the review of specific personnel decisions relating to staffing the new organizational structure – submit by 31 July 2006</i>
Contract No. 7 No. 4500033349 \$549,955	14/08/2006	15/08/2006 15/10/2006 31/12/2006	\$100,000 \$249,955 \$200,000	29/08/2006	<i>Upon signing of the contract Progress report Statement of progress report Terms of reference attached</i>
TOTAL			\$2,145,626		
DURING 2004-2005 BIENNIUM			\$1,195,671		
DURING 2006-2007 BIENNIUM (current)			\$949,955		

1.2 UNESCO AND EDUCATION SECTOR CONTRACTS

2. The following paragraphs provide background information on contracts and waivers at UNESCO as a means of putting the Navigant Consulting contracts into context. UNESCO's regular budget for the 2004-2005 biennium amounted to \$610 million in budgetary resources and \$243.5 million in extrabudgetary resources, that is, a total of \$853.5 million. Of the \$610 million, \$336 million were staff costs and \$258 million were activity costs, to which \$16 million must be added for other expenditure. The funds allotted to the Education Sector from the regular programme totalled \$113 million, including \$49 million for staff costs and \$64 million for the funding of programme activities.²

The table below sets out in detail, for the Organization's expenditure under temporary assistance, consultants and contractual services,³ actual expenditure in comparison with initial budget provisions. For the Education Sector, during the biennium under consideration, \$1.2 million were obligated for the Navigant Consulting contracts, that is, almost 5.7% of the Sector's expenditure on contractual services.

² Source document: 175 EX/31, Report by the Director-General on the budgetary situation of the Organization for 2004-2005 (32 C/5) after the closure of accounts as at 31 December 2005.

³ This item of expenditure is contained in document 175 EX/31, which sets out in detail expenditures from the regular budget under temporary assistance and consultant services.

Table No. 2. Expenditures under temporary assistance, consultant services and contractual services (regular budget)

In thousands of \$	Initial budget (32 C/5) for temporary assistance and consultants	Actual expenditure temporary assistance supernumeraries (a)	Actual expenditure consultants (b)	Total expenditure (a)+(b)	Rate of expenditure
II Programmes and programme-related services	15,966	5,758	5,803	11,561	72.4%
including II A – Programmes	14,455	5,365	5,784	11,147	77.1%
<i>Education</i>	3,819	2,206	2,926	5,131	134.4%
<i>Natural sciences</i>	4,583	781	1,515	2,295	50.1%
<i>Social and human sciences</i>	2,517	543	344	887	35.2%
<i>Culture</i>	2,686	1,230	689	1,919	71.4%
<i>Communication and information</i>	850	605	310	915	107.7%

Source document: 175 EX/31, page 26

In thousands of \$	Indicative budget (32 C/5) for contractual services	Expenditure	Rate of expenditure
II Programmes and programme-related services	62,443	64,555	103.4%
including II A – Programmes	59,624	61,911	103.8%
<i>Education</i>	19,946	20,997	105.3%
<i>Natural sciences</i>	10,148	14,111	139.1%
<i>Social and human sciences</i>	8,200	6,494	79.2%
<i>Culture</i>	9,587	9,812	102.3%
<i>Communication and information</i>	11,743	10,497	89.4%

Source document: 175 EX/31, page 26

The costs incurred by the reform of the Education Sector were not provided for in the Organization's budget for 2004-2005.

1.3 PRINCIPAL VENDORS

3. The first five (of seven) Navigant Consulting contracts, concluded between June and December 2005, were financed by funds from the 2004-2005 biennium (regular budget). For the contracts concluded by UNESCO Headquarters alone, all categories taken together, Navigant Consulting is a major vendor, ranking 17th behind, in particular, contractors for the renovation of Headquarters buildings. However, it is best not to compare contracts that are too different in nature. Under the head of intellectual service contracts only, Navigant Consulting is the second, if not the first, vendor to Headquarters (depending on whether the subvention to the Asia-Pacific Cultural Centre for UNESCO is included or not).

4. The figures below come from the SAP system (FABS), which tracks the Organization's budgetary transactions and accounting entries. As stated above, this only concerns transactions

made at Headquarters,⁴ as the equivalent information in respect of field units is not available. Only the amounts received by Navigant Consulting have been audited.⁵

Table No. 3. List of main vendors to UNESCO for contracts concluded at Headquarters only, based on payments under SAP in 2004-2005

<i>Rank</i>	<i>Vendor</i>	<i>Amount paid (\$)</i>	<i>Source of funds</i>	<i>Purpose of contract</i>
1	EI GCC SAS	10,526,018	RP-EXB	Headquarters Renovation
2	RMTI	2,862,667	RP-EXB	Headquarters Renovation
3	T 3 E	2,474,254	RP-EXB	Headquarters Renovation
4	CFE - Compagnie Française	2,423,335	RP	Headquarters Renovation
5	ARTENIS PROPLETE	2,279,338	RP	Building upkeep/maintenance
6	CLEMENCON ETS	2,175,563	RP	Headquarters Renovation
7	COUVERTURE PLOMB GENIE CLIMATIQUE	2,092,994	RP-EXB	Building Construction
8	ASIA PACIFIC CULTURAL CENTRE	2,047,038	EXB	Subvention for a programme activity ⁶
9	LA POSTE - PARIS SUD OUEST	1,930,668	RP-EXB	Operating costs
10	Simed International BV	1,898,270	EXB	Equipment
11	Compagnie Parisienne de Chauffage Urbain (CPCU)	1,660,341	RP	Operating costs
12	SARL ATB	1,653,882	RP	Headquarters Renovation
13	TTI TRANSPORT TERTIAIRE INDUSTRIE	1,612,644	RP	Headquarters Renovation
14	EDF GDF	1,606,389	RP	Operating costs
15	Dentsu Inc.	1,318,219	EXB	Design and production of the UNESCO stand at the Aichi Exhibition
16	SNEF	1,276,915	RP	Headquarters Renovation
17	Navigant Consulting Inc.	1,195,671	RP	Services
18	ICSU	1,130,000	RP-EXB	NGO service provision
19	OTIS	1,114,562	RP	Building upkeep/maintenance
20	DHL INTERNATIONAL SA	1,103,753	RP-EXB	Operating costs

1.4 STATISTICS CONCERNING WAIVERS

5. The explanations set out below illustrate the practice in respect of waivers in the Organization and place the requests for waivers for the Navigant Consulting contracts in their proper context.

⁴ Combined data from the Funds Management and Materials Management modules, sorted by book account.

⁵ See recommendation on the functioning of the Contracts Committee.

⁶ "Financial support towards promotion of international cooperation and mutual understanding."

1.4.1 Waivers of the rules of the UNESCO Administrative and Financial Manual documented by the Division of the Comptroller (ADM/DCO)

6. Requests for waivers of the rules concerning travel, hospitality expenses, the extension of the duration of contracts and other matters are submitted to the Financial Control and Services Section of the Division of the Comptroller (DCO/FCS), which reviews the requests and makes a recommendation to the Assistant Director-General for Administration (ADG/ADM). This procedure is not required by the Manual but is a result of common practice. For purchases amounting to less than \$100,000, the contracting units are responsible for retaining in their files the documents submitted to justify the waiver, and the Financial Control and Services Section (DCO/FCS) is not, in theory, informed of requests for such waivers. Such requests may, however, be transmitted to it on occasion.

7. In 2004, 43 requests for waivers of the rules of the Administrative Manual (outside the procurement rules) were examined by the Financial Control and Services Section of the Division of the Comptroller (DCO/FCS). Most cases concerned short extensions to contracts that were coming to term or matters related to travel costs, and none of them involved the Education Sector. One waiver pertained to competitive bidding procedures and was requested owing to an emergency and the very specific nature of the equipment, namely computer network hardware. The unit provided estimates for comparative purposes to back up the request, which concerned an amount of \$138,677.

8. In 2005, 48 requests for waivers were recorded. Only two cases concerned calls for tenders (but not by the Education Sector). In the first case (20 October 2005), a waiver was requested⁷ by another department for a contract that had been costed below the threshold of \$100,000 during negotiations with the firm but had since risen above the threshold owing to changes in the euro/dollar exchange rate to \$102,163. The waiver was examined by FCS. In the other case, a waiver of the competitive bidding process was requested by the division in charge of Headquarters management (ADM/HQD) for urgent safety work. The request was transmitted to the Contracts Committee for review. No such requests for waivers were submitted in respect of the Navigant Consulting contracts.

9. In 2006 (up to October), 105 requests for waivers were recorded. Nine of them were from the Education Sector, but they did not pertain to competitive bidding procedures submitted to the Contracts Committee.

1.4.2 Waivers of the rules of the UNESCO Administrative Manual and of procurement procedures submitted to the Contracts Committee

10. An examination of the list of contracts reviewed by the Contracts Committee shows that 27 waivers were granted by the Contracts Committee in 2004 and 2005 amounting to a total of \$5.5 million and \$10.8 million respectively. In addition to these figures, there are cases of ex post validations that were not included in those amounts and contracts approved under waivers that are not reviewed by the Contracts Committee. The number of such cases cannot be ascertained.

⁷

On 20 October 2005.

Table No. 4 Number of contracts reviewed by the Contracts Committee and number of waivers by sector

2004	Contracts reviewed	Amounts approved in \$M	Waivers	Amounts covered by waivers in \$M
Administration	24	48.7	3	1.3
Procurement (PRO)	19	9.7	3	1.0
Sectors	23	8.1	10	2.7
<i>including Education</i>	1	0.5	0	0.0
Field offices	24	4.7	11	0.5
Total	90	71.2	27	5.5

2005	Contracts reviewed	Amounts approved in \$M	Waivers	Amounts covered by waivers in \$M
Administration	32	61.6	2	2.5
Procurement (PRO)	14	6.0	0	0.0
Sectors	34	11.1	6	1.1
<i>including Education</i>	7	2.2	2	0.5
Field offices	50	18.3	19	7.2
Total	130	96.9	27	10.8

2006	Contracts reviewed	Amounts approved in \$M	Waivers	Amounts covered by waivers in \$M
Administration	14	12.4	2	0.7
Procurement (PRO)	2	0.6	0	0.0
Sectors	34	11.4	11	3.6
<i>including Education</i>	2	0.8	1	0.6
Field offices	100	40.2	21	20.0
Total	150	64.6	34	24.2

The values of the contracts in \$ million are approximate, since the amounts of each contract have not been systematically provided.

11. The waiver referred to in the previous paragraph was examined on 15 December 2005 and concerned an exemption from competitive bidding owing to the urgent nature of the safety work. The Headquarters Division (ADM/HQD) proposed and obtained the award of the tasks concerned to firms already actively involved in the renovation work on Headquarters buildings for urgent safety work amounting to a total of \$1.5 million distributed among 11 different enterprises, but only five contracts were in excess of \$100,000. To justify the request for a waiver, the division produced the relevant extract from the decisions of the Executive Board and recalled the circumstances surrounding the safety work, the existing budget framework and decisions of the College of Assistant Directors-General. One of the two waivers granted to the Education Sector in 2005 concerned contracts with Navigant Consulting submitted as a single request. This case covered the first five Navigant Consulting contracts.

2. PROCEDURE APPLICABLE FOR THE PROCUREMENT OF INTELLECTUAL SERVICES IN EXCESS OF \$100,000

12. The applicable rules were amended between March 2006 and July 2006. Unless otherwise stated, the rules referred to below are those that were in force between June 2005 and March 2006.

2.1 PREPARATION OF THE CONTRACT BY THE SECTOR

13. **Type of contract to be used.** A fee contract is a contract “concluded by UNESCO with an individual or legal entity – hereinafter called the “contractor” – having a specialized skill, in order to obtain special goods or services, such as (...) the provision of other services specially suited to the Organization, in return for a lump sum (which includes the contractor's remuneration) and by a specified deadline” (Item 700.4 of the Administrative Manual). The use of outside expertise must be indispensable (for instance, the service is of great importance affecting the smooth execution of the Programme or a specific decision of the governing bodies of UNESCO). The expert knowledge must be unavailable in UNESCO (Item 700.5) and it must be of a temporary nature. For the record, these contracts are to be distinguished from consultancy contracts, which are generally concluded directly with an individual for a specific piece of work and are the subject of remuneration on the basis of time spent. This kind of contract is thus suited only to tasks that are ad hoc and have specific purposes. They are not germane to the remainder of this report.

14. **Estimate of the value of the work to be provided under the contract.** For the purposes of negotiation, the value of the work must be estimated by the Secretariat unit on the basis of the nature and duration of the tasks to be performed, taking into consideration the rates of remuneration applicable to consultants (Item 700.17).⁸

15. **Selection of the contractor.** The contractors must be selected on the best possible cost/quality terms (Item 1025.3). The sectors must ensure that the contractors selected are those who, for the lowest possible price, provide the best guarantees of proper execution and the most selective criteria in terms of quality, products delivered, and so on. The contractor must also be selected according to the general principles set out in Item 2430.15, which include competence, diversity of geographical and cultural origin, the ban on having more than one contract at any one time, and so on, and on the basis of the fee demanded.

16. **Assessment of relevance and conformity with regulations before signature of the contract.** All contracts, before they are concluded, should normally be assessed as to their relevance and regularity by means of an “Assessment Form for Consultancy or Fee Contracts” (Form No. 431). The purpose of the form is to confirm the programme and operational relevance and administrative and financial compliance with regulations of the envisaged contract and to gather all prior authorizations and any waivers concerning the contract.

2.2 ORGANIZATION OF COMPETITIVE BIDDING AMONG CANDIDATE CONTRACTORS AND REVIEW BY THE CONTRACTS COMMITTEE

17. **Principle of competitive bidding among vendors.** Whatever the amount, all contracts concluded by the Organization, including those for small amounts, must be the subject of competitive bidding and selection based on price. For contracts below \$30,000 (\$20,000 until March 2006), several estimates are required. For contracts amounting to more than \$30,000 and less than or equal to \$100,000 “bids based on neutral specifications are invited from the international market (by direct solicitation or by advertising)” (Item 1025.8). **For contracts amounting to more than \$100,000 “tenders based on neutral specifications are invited from**

⁸ The table showing the ceilings for the remuneration of consultants in the online version of the Manual is out of date.

the international market (by direct solicitation or by advertising)” (Item 1025.9). “The contracting unit analyses the bids and submits a recommendation for the award of the contract to the Contracts Committee in accordance with the provisions of Item 326.14” (Item 1025.11).

18. **Authority to approve contracts.** Authority to approve contracts is delegated to the Assistant Director-General for Administration for contracts exceeding \$150,000 (Manual, June 1997, Item 1025.12). The threshold was raised to \$350,000 in July 2006 (Item 1025.3).

19. **Review by of the Contracts Committee and points verified.** The Committee, chaired by the Comptroller or his or her representative, “ensures compliance with the procedures applicable to contracts awards (...) and makes sure, in particular, that sectors/bureaux/offices/units (...) have made the right choice of contractor at the best quality/price ratio” (Item 326). “The Committee reviews and approves, prior to the commitment of funds, all proposals of contracts in excess of \$100,000 and up to a ceiling of \$150,000 on the one hand and, on the other, reviews proposals of contracts exceeding \$150,000 and submits its recommendations about them to the ADG/ADM” (Item 326.3). In addition, the Committee also reviews any contract proposal that “modifies an existing contract, or constitutes a repeat order, and which would bring the total expenditure under the original contract up to an amount exceeding \$100,000” (Item 326.4 (c)). The points to be verified by the Contracts Committee are set out in Item 326.5: “The purpose of the review of the proposed contract is to determine: (a) whether the procedure followed for selecting a contractor, and the terms of the contract, conform to the Financial Regulations and Rules and other provisions set out in this Manual, and more especially Item 1025; (b) whether the amount of expenditure is justified considering the nature of the goods or services to be obtained.”

20. **Documentation required by the Contracts Committee.** The documentation includes, among other things (Item 326.14) “a covering letter addressed to the ‘Chairperson of the Contracts Committee’ containing: (i) the project reference, the authority for expenditure for the activity under consideration, the amount available for the expenditure and the budget code to which such expenditure will be charged. Information concerning the timetable for expenditure planned for the activity in question must also be provided; (ii) an itemized description of the goods or services offered for contracting. For service contracts, a statement must be submitted as to why the service cannot be provided by existing UNESCO staff; (iii) the description of the bidding and contracting philosophy where complicated or sophisticated, including special criteria to be applied in the evaluation of bids; (iv) a statement indicating the extent of the call for bids as well as a description of market research undertaken (by way of advertisement or by using a list of prospective bidders; in the latter case, listing and pre-qualification criteria must also be specified); (v) a recommendation as to which contractor should be selected, including notes on reliability, standing, etc. (see Item 1025.16) and, if the lowest bid is rejected, the reasons for so doing; a statement of the total cost involved; if bids have not been invited, the reasons for the choice of the contractor and details of how the price or the fee payable was determined (see Item 1025.15); (vi) full details concerning the request for a waiver of advertising and of competitive bidding resulting from the reasons set out in Item 1025.13; (vii) full details concerning the request for a limitation of the geographical coverage of the competitive bidding resulting from the reason set out in Item 1025.14; and (viii) the request to the Contracts Committee to approve the draft contract.”

2.2.1 Arbitration in the event of disagreement between the Sector and the Contracts Committee on the award of the contract (Item 326.27)

21. In the event of disagreement with the Contracts Committee (Item 326.27) over the award of a contract, the originating unit may submit the matter, through the Chairperson of the Contracts Committee, who may add comments, to the Assistant Director-General for Administration for decision. The request must be made within three working days of the decision.

22. A disagreement as to compliance with the principles for a waiver of the rules of competitive bidding is not provided for under this Item, which only covers cases where the originating unit

considers that there are imperative reasons for awarding the contract to a candidate other than the candidate selected by the Contracts Committee.

2.3 POSSIBLE WAIVERS OF COMPETITIVE BIDDING PROVIDED FOR BY THE MANUAL

23. The Administrative Manual provides for cases where advertising and competitive bidding may not be compulsory (Item 1025.13):⁹ “A contract may be placed without advertising or competitive bidding if:

- (a) the prices or rates of the goods or services concerned are fixed by legislation;
- (b) evidence is provided that no source of supply exists other than that proposed;
- (c) the requirement is proved to be urgent and cannot be delayed by competitive bidding;
- (d) there is an obligation for standardization or interchangeability of equipment, supplies or parts, and there is evidence that procurement must be from a specific source;
- (e) the items are proprietary articles, medical supplies, perishable goods, etc., and it is not considered practical to apply competitive bidding;
- (f) the source of supply has been selected by the United Nations and standard prices are proposed for use by individual organizations of the United Nations system;
- (g) the source of supply is another United Nations organization which offers such goods and services on a non-profit making basis at best competitive market prices.”

24. When a contracting unit or sector considers that one of these cases applies, the Manual sets out the procedure to be followed¹⁰ (Item 1025.15 of the current version): for contracts amounting to more than \$30,000 and less than \$100,000, “if any of the above reasons is evoked (...) a record of the justification is retained in the files of the sector/bureau/office responsible”. For contracts in excess of \$100,000 (cases falling under Item 1025.9), “the dossier accompanied by the relevant justification is submitted – via the Administrative Officer (AO) and the Sector ADG or Director or Head of the Bureau/Division/Institute/Office – to the Contracts Committee for decision”.

In other words, the UNESCO Administrative Manual provides that the decision on whether or not to waive the rules of advertising and competitive bidding must be taken by the Contracts Committee. The Secretariat interprets, and acts on, this point differently, considering that for contracts in excess of \$350,000 the Contracts Committee makes a recommendation and the decision is taken by the Assistant Director-General for Administration.¹¹

2.4 A POSTERIORI CONTROL OF THE EXECUTION OF THE CONTRACT

25. In addition, contracts are subject to a posteriori control as set out in Item 700.25: “The official responsible for the contract in the sector/bureau/office is responsible, in cooperation with the AO for following up its execution, seeing to it that the contractor abides by the terms of the contract (...) When contracted services are not delivered by the prescribed date (or dates), that official, in cooperation with LA (...) should proceed as follows:

⁹ Item 1025.13 on the conditions for waiving of advertising and competitive bidding.

¹⁰ Item 1025.15, Procedure for waiving of advertising and competitive bidding or for limiting geographical coverage.

¹¹ Since March 2006, Appendix 10B of the Manual, which concerns the procurement of goods and services for field projects and established offices away from Headquarters, stipulates that, for contracts in excess of \$350,000, the Contracts Committee gives a recommendation on the request for a waiver and it is the Assistant Director-General for Administration who approves or rejects the waiver.

- either recommend that the contractor not be paid and/or demand reimbursement of any advance or instalment already paid, if the delay in delivery renders the services useless or invalidates the obligation (...);
- or draw up an amendment to the contract in order to change the delivery deadline(s) in accordance with the procedures set out in para. 700.27".¹²

In the event of failure to follow this procedure, the official responsible for the contract may be held financially responsible pursuant to Rule 101.2 of the Staff Regulations and Staff Rules.¹³

26. **Duration and succession of fee contracts:** "As a rule, no limit is placed on the length of time that may be covered by a succession of fee contracts concluded with the same contractor (individual or body) over a certain period; however, in view of UNESCO's universal vocation, consideration must be given to the selection of contractors from a range of intellectual and geo-cultural backgrounds" (Item 700). The duration of a single contract is however limited to a maximum period of twelve months (Administrative Circular No. 2219).

27. **Finally, no rule provides for the *ex-post* regularization of irregular acts.**

3. EXAMINATION OF THE PROCEDURES FOLLOWED IN THE SELECTION OF CONTRACTORS FOR THE RESTRUCTURING OF THE EDUCATION SECTOR

3.1 PROCEDURE FOLLOWED FOR THE FIRST AND SECOND CONTRACTS (No. 4500024765 AND No. 4500025476)

28. The Assistant Director-General for Education, as he so informed us, first heard of Navigant Consulting through a personal contact made in early 2005, that is, before he took up duties,¹⁴ with a former manager of Navigant Consulting at an education conference. Until March 2005, she had been Executive Director of the Commission on Higher Education of a state in the United States of America. The Assistant Director-General for Education stated that he had chosen the firm owing to its extensive expertise in the field of change management.

29. On 20 June 2005, ADG/ED transmitted a memorandum¹⁵ to the Director of the Executive Office of the Education Sector (DIR/ED/EO) by which he explained that four contracts were to be signed with Navigant Consulting for an amount in the order of four times \$100,000 and that the contracts would be followed by a larger contract entailing competitive bidding. The memorandum stated that in the course of a discussion, the Deputy Director-General (DDG) had agreed in principle. In the same memorandum, ADG/ED also stated that Navigant Consulting was an international firm, with a good reputation and serious references in management consultancy, that the procedure to be followed was justified on grounds of the urgent need to move matters forward as soon as possible after taking up his duties, with a view to a meeting of a working group in July 2005, a two-day seminar at the end of July, the Executive Board session in autumn 2005 followed by the General Conference session and lastly, the seminar for all the Education Sector's staff in

¹² If the services rendered do not comply quantitatively and/or qualitatively with the terms of the contract, and unless the contractor remedies the situation without delay, the official responsible for the contract, in cooperation with the services mentioned above, must take the necessary steps to: obtain reimbursement of any advance payment or instalment already paid; block any future payment due under the terms of the contract; cancel the contract without compensation to the contractor (see para. 700.28), liquidate or cancel the corresponding obligation (see para. 700.26.b) and communicate this situation to the other Secretariat units concerned in order to warn them against the conclusion of any other contracts with the same contractor in the future. Item 700.25.

¹³ Rule 101.2 of the Staff Rules provides that "any staff member, who, by malice or culpable negligence, or by failure to observe any regulation, rule or administrative procedure of the Organization, involves the Organization in unnecessary liability, expense or loss, shall be held responsible, and may be required to pay compensation therefor".

¹⁴ New Assistant Director-General for Education whose recruitment was announced on 22 December 2004 by the Director-General and who took up duties on 15 June 2005.

¹⁵ Memo ADG/ED/05.014.

early November 2005. Finally, ADG/ED stated that “the fractioning of the contracts into four, each under \$100,000, was not intended to bypass the Contracts Committee” but enabled the rules of UNESCO to be observed. The Contracts Committee was therefore not consulted as the threshold of \$100,000 had not been reached.

Comments by the Director-General

On the issue of the “fractioning of the contracts”, the reason for smaller contracts was to mitigate risk by exercising a degree of control over the contractor’s performance.

30. The memorandum of 20 June 2005 was endorsed¹⁶ by the Executive Officer with the following annotation: “Please implement the ADG/ED’s instructions”. The Administrative Officer (AO) informed the ADG/ED orally about his doubts as to the regularity of the procedure in the presence of the Executive Officer, his immediate supervisor. The remarks concerned, in particular, the fact that a contract for an amount in excess of \$20,000¹⁷ required recourse to informal competitive bidding.¹⁸ Nevertheless, the Executive Officer instructed the Administrative Officer (AO) orally and in writing to award the contract. The memorandum was then endorsed on the same day by the Administrative Officer (AO), with an instruction to one of the certifying officers in the Administrative Office, namely “As per instructions, please process this contract”. The first contract, No. 4500024765, was signed on 23 June 2005.

31. In preparation for the seminar on the management of the Sector of 22-24 July, the Administrative Officer received oral instruction to validate the second contract (No. 4500025476) amounting to \$96,002 for which the deliverable is the “Facilitation leading role retreat 22nd-24th July”. This contract exceeded the “\$100,000 threshold for the same contracting party in the last 12 months. The Administrative Officer objected again to this procedure and pointed out to the Executive Office that the procedure of the Contracts Committee had to be followed and as a result the contract could not be validated within the time-frame expected by the ADG/ED. The ADG/ED was informed of this and held the Administrative Officer responsible for this delay.

32. On 22 July 2005, a draft memorandum was prepared by the Administrative Officer for signature by the ADG/ED to inform and seek the approval of the Contracts Committee on this second contract (memo ED/EO/AO/I/05/024) and others to come (“We will be issuing several contracts to them in stages. This is the second contract for which I seek your approval”). This draft was visaed by the Executive Officer and the Administrative Officer, but was not signed by the ADG/ED nor sent to the Committee. The Secretariat explained that this note, although visaed by the Executive Officer, was not an official document of the Sector. It was given to the auditors by the Administrative Officer. It is possible that either the ADG/ED did not want to send this memorandum, or that it had never been presented to him, or that he found it irrelevant, since the tasks covered by the contract were due to start that very day.

33. The ADG/ED indicated to the Administrative Officer that he had received an agreement in principle from the DDG to proceed in this way. Yet, the Administrative Officer asked to be provided with a written copy of this waiver from the DDG. There being no such document, he said that he asked the DDG directly for confirmation of the process. On the same day (22 July), a note for the record was prepared which described this contract. The note indicates that the DDG said he could grant the waiver, but only after the contract reached him through the Contracts Committee. Under these circumstances, the Administrative Officer having said earlier on that he would not validate this contract over \$100,000 without going through the Contracts Committee, the Executive Officer bypassed him and asked another member of the Administrative Office to process the contract in FABS. The second contract (No. 4500025476) was signed on 26 July 2005 and the payment claim registered on the same day.

¹⁶ Handwritten visa dated 22 June 2005.

¹⁷ This threshold was raised to \$30,000 in March 2006.

¹⁸ Administrative Manual, Item 1025.18.

34. On 22 September, the Financial Control and Services Section (ADM/DCO/FCS) addressed a memorandum¹⁹ to the Chairperson of the Contracts Committee,²⁰ reporting three contracts that had exceeded the \$100,000 threshold²¹ for a single vendor in the past 12 months. One of the three cases concerned the second Navigant Consulting contract. The memorandum stated that the three cases should be submitted to the Contracts Committee. In response, a colleague of the Deputy Director-General requested the head of the Financial Control and Services Section to lend support to the Education Sector. A message to that effect, containing information explaining the procedure, was sent on 14 September to the Executive Officer. The file does not indicate what action has been taken to follow up the alert.

3.2 PROCEDURE FOLLOWED FOR THE THIRD AND FOURTH CONTRACTS (No. 4500026337 AND No. 4500027678)

35. The third contract (No. 4500026337) was signed on 12 September 2005 with the same consultancy firm. It was not the subject of any particular procedure. There is no documented exchange or negotiation with the contractor as to the price and value of services. The deliverables were “Meetings with external stakeholders” (demanded for 15 October 2005). The payment claims and summation report (demanded for 31 October) were recorded on 25 and 31 October 2005 respectively.

36. The fourth contract (No. 4500027678) was for an amount of \$99,899 and was signed with the same firm on 3 November 2005. It covered services linked to a presentation made at an Education Sector seminar on 25 November 2005, interviews with staff (\$49,889) and the inclusion of these contributions in a new report. A request for a waiver applicable retroactively to the first four contracts was submitted on 25 November 2005 to the Deputy Director-General (see below).

3.3 SELECTION PROCEDURE FOR THE FIFTH AND SIXTH CONTRACTS (No. 4500028835 AND No. 4500031016)

37. Pursuant to the content of the ADG/ED’s memorandum of 20 June 2005, competitive bidding was organized for a contract for a higher amount, in accordance with Item 1025.11 of the Administrative Manual. The Sector files contained an internal memorandum²² setting out three possible competitive bidding options, with details of the advantages, disadvantages and timescales for each option. The following were envisaged: (i) open bidding procedure; (ii) requests for expressions of interest²³ – the timescale for which was three weeks (two weeks to receive the expressions of interest and one week for analysis); and (iii) a restricted bidding procedure, that is, “direct invitation to a minimum of six selected firms/institutions of several different nationalities to submit proposals based on the terms of reference. More than six would probably demonstrate higher level of transparency”.²⁴ The advantages and disadvantages of the restricted bidding procedure were outlined as follows: “Pro: Least time-consuming among the three options. Invitation can be sent to those firms/institutions the Sector already familiar with, is known to be well-regarded in the area of expertise or has prior experience working for UNESCO in the same area. Con: perhaps the least transparent among the three options, but definitely within the bounds of

¹⁹ ADM/DCO/FCS/03/04-158 of 22 September 2005.

²⁰ The Comptroller or his or her representative, Item 326.7 of the Administrative Manual.

²¹ Threshold provided for under Items 326.3 and 326.4 of the Administrative Manual.

²² The memorandum is not dated and its origin is not given.

²³ ...“useful in identifying firms/institutions most appropriate for the services required. Based on the information provided, Sector can pre-select short list of firms/institutions to contact for submission of proposal”.

²⁴ ...“direct invitation to a minimum of six selected firms/institutions of several different nationalities to submit proposals based on the Terms of reference. More than six would probably demonstrate higher level of transparency”.

UNESCO regulations.”²⁵ This last option was the one selected (restricted bidding procedure involving pre-selected candidates).

38. Initially, a list of nine consultancies was drawn up: Advanced Dynamics (Australia), Martin Jenkins & Associates (New Zealand), Price Waterhouse Coopers PWC (New Zealand), ManNet (Switzerland), UHY Advisors (Washington DC, USA), Management for Development Foundation MDF (nationality not given), Accenture (multinational), McKinsey & Co. (multinational) and Navigant Consulting. The working file for the call for proposals contained no description of the firms, either in terms of the number of staff and annual turnover, or past references in respect of restructuring and management. At an unspecified date, the list was reduced to six firms, the minimum required by the procedure selected.²⁶ Accenture, PWC and MDF were removed from the list.

39. Terms of reference were drafted by the Sector and included in the request for proposals (Request for Proposal, Section III, see Annex). The request for proposals did not give a reference price. The submission date, initially 31 December, was brought forward to 30 October and then to 17 October 2005.

40. The request for proposal, entitled *Advice on Strategies for Improving Education Sector's Effectiveness*, was signed on 14 September 2005 by ADG/ED and on 21 September 2005 sent by email to four selected firms, and by fax to McKinsey & Co. The reasons for the one-week delay between the date of signature (14/09) and the date of dispatch (21/09) are not known. There was no trace of the dispatch to Navigant Consulting in the Sector's file. The electronic message corresponding to the dispatch to Navigant Consulting (email of 21 September 2005) was given to the auditors in response to the provisional report. The opening of bids took place on 20 October before three people. The records of the opening of bids noted that one reply had been received and gave 10 September as the date on which the request for proposals was issued – that date had either been in the Navigant Consulting documents or given by the Sector's representatives. Evidence of dispatch was documented by incomplete copies of the electronic messages dispatching the requests for proposals.²⁷ A summary table of the dispatches, reminders and full replies is annexed hereto.

41. Analysis of the proposals received was scheduled for 20 to 27 October 2005. The minute is dated 20 October 2005, the day on which the bids were opened. The first meeting of the Contracts Committee took place on 21 October 2005: the decision was adjourned after the Committee members expressed reservations as to “the fairness of the competition, transparency of the process, availability of budget funds, clear definition of deliverables and reasonable value for money”.

42. The second meeting of the Contracts Committee, at which objections were raised, took place on 4 November 2005. Another informal meeting was scheduled for 15 November to reach agreement on the wording of the minutes of the Contracts Committee, but it was not conclusive either. The representative of the Office of International Standards and Legal Affairs (LA) refused to sign the minutes of the meeting of 4 November and backed up that refusal with a memorandum

²⁵ “Pro: Least time-consuming among the three options. Invitation can be sent to those firms/institutions the Sector already familiar with, is known to be well-regarded in the area of expertise or has prior experience working for UNESCO in the same area. Con: perhaps the least transparent among the three options, but, definitely within the bounds of UNESCO regulations”.

²⁶ This minimum is referred to in a handwritten annotation to the list. The Education Sector file did not include the minutes of the meeting at which this adjustment was made. The reasons for the removal of three names are unknown.

²⁷ The Manual (Item 1025.34) states in this respect that the file should include, among other things, “full information of the tender exercise including complete solicitation document, approved list of potential suppliers contacted (shortlist) and their response records, any correspondence with the Bidders (...)”. The day on which the request for proposal was signed, the Financial Control and Services Section (ADM/DCO/FCS), at the request of a colleague of the Deputy Director-General, offered to assist the Executive Officer (EO/ED) and inform the Education Sector about UNESCO regulations and procedures. The offer was ignored.

addressed to the Assistant Director-General for Administration a.i.²⁸ Throughout this period, and until the end of November 2005, Navigant Consulting continued its work at UNESCO Headquarters.

3.4 APPROVAL OF THE FOURTH CONTRACT AND EX POST APPROVAL OF THE FIRST THREE CONTRACTS

43. On 25 October 2005, in a note addressed to the Deputy Director-General (DDG),²⁹ ADG/ED requested a waiver for the three contracts already awarded and the fourth, which was to arrive shortly. "As we are short of time, we are not going through the Contracts Committee but submitting it to you directly for a derogation for all the four contracts." The following statement was also made: "I would also mention to you now that there will be a larger contract that will be opened to competitive bidding." Reference was being made to the fifth contract and the invitation to tender referred to above, for which a single sealed envelope had been opened on 20 October, five days earlier. On 3 November 2005, the Deputy Director-General replied in a hand-written annotation: "OK for all 4 contracts, it being understood that the larger contract follows strictly rules and regulations of the Organization".

3.5 APPROVAL OF THE FIFTH CONTRACT

44. At the first meeting of the Contracts Committee on 21 October 2005, the Committee members postponed the examination of the matter pending explanations from the Education Sector concerning the arrangements for and transparency of the competitive bidding process that had been held, the nature of the deliverables and the reasonableness of the price in relation to the services offered. At the end of the second meeting, on 4 November 2005, the members of the Committee – with the exception of the representative of the Office of International Standards and Legal Affairs (LA) – recommended that the contract be approved because the evidence was not sufficient to invalidate the procedure. The members – with the exception of the representative of LA – also regretted that the Sector had not paid more attention to the details of the bidding process. The minutes of the meeting were signed by the representatives of the Division of the Comptroller (DCO), the Bureau of the Budget (BB), and the Procurement Service (ADM/PRO). The representative of the Office of International Standards and Legal Affairs expressed disagreement at that time.

45. The Deputy Director-General, acting as ADG/ADM, was then called upon to take a decision, on the basis of the minutes of the meeting and three other memoranda addressed to him:

- in a memorandum dated 18 November 2005 and addressed to ADG/ADM a.i., the Office of International Standards and Legal Affairs stated that the procedure had not complied with regulations, that Navigant Consulting had been given an advantage and that the length of the contract was excessive;³⁰
- the representative of the Division of the Comptroller, in his capacity as Chairperson of the Contracts Committee (ADM/DCO/TRS), informed ADG/ADM a.i. on 21 November that three members of the Contracts Committee had approved the contract and that the representative of the Office of International Standards and Legal Affairs had not endorsed it: "In our view, all the issues raised by Legal Affairs have been addressed in Committee, and we regret that Legal Affairs finds it necessary to send forward a dissenting opinion."

²⁸ Memo LA/GEN/2005/275 of 18 November 2005 to ADG/ADM a.i.

²⁹ Memo ED/EO/AO/1/202.

³⁰ Management studies contracts may not extend more than three months beyond the end of the financial period (Appendix 3F of the Administrative Manual).

We (DCO, ADM/PRO, BB) reiterate our willingness to support the recommendation as set out in the minutes of the meeting;³¹

- in a message dated 23 November 2005, ADG/ED informed ADG/ADM a.i. that he had contacted Navigant with a view to lowering the cost of the contract to \$1.2 million and obtaining a description of the tasks to be accomplished by 31 March, at a cost of \$800,000.³² On 24 November ADG/ED also sent a memorandum³³ concerning the consultation of the six companies (dispatches and replies). In the annex thereto, the reply of the Advanced Dynamics company was shortened without indicating any of the deleted text. The following sentence was not brought to the attention of ADG/ADM a.i.: “Furthermore, the selection criteria suggest that you are looking for a firm that you already engage with rather than a fresh approach”, nor to the notice of the Office of International Standards and Legal Affairs or the Comptroller.³⁴

46. The Deputy Director-General confirmed that he consulted the Director-General at that stage and had considered starting the entire procedure over again, a solution that was finally discarded. In a handwritten memorandum of 25 November 2005, Deputy Director-General, ADG/ADM a.i. stated that he had read the memorandum of 18 November 2005 from the Office of International Standards and Legal Affairs; that he had authorized the signing of the Navigant contract, subject to clarification, through negotiation, of the price and the list of deliverables; that ADG/ED had confirmed that the six firms had effectively been consulted; and that the subject had been discussed with the Director of the Office of International Standards and Legal Affairs and the Director-General.³⁵ The contract was signed on 9 December. The first deliverable “New organizational structure” was scheduled for 31 December 2005, giving rise to a payment of \$400,000, which was recorded on 3 January 2006. The second deliverable was scheduled for 31 March 2006 and included the following items: “organization management task, personal management task, information management task, budget and planning task, project management and ongoing support”, estimated at \$400,000.

3.6 PROCEDURE FOR THE AWARD OF THE SIXTH CONTRACT

47. The sixth contract was awarded to the same company, being part of the fifth contract that had been divided into two in order to meet the performance deadline of 31 March 2006³⁶ for contracts under the 2004-2005 biennium and, above all, to use all the available funds by the end of the biennium (\$800,000) and to carry over to the next biennium the additional \$400,000 in allocated funds. It should be noted that ADG/ADM a.i. did not issue a separate authorization for the sixth contract, estimated at \$400,000, even though that amendment had been referred to in the minutes of the Contracts Committee meeting of 4 November 2005. The authorization for the fifth contract concerned the sum of \$800,000 only. The contract was signed on 19 April 2006 by ADG/ED. The payment claims were also signed by ADG/ED, instead of the contracting firm. The contract was not awarded pursuant to any particular procedure.

³¹ “In our view, all the issues raised by Legal Affairs have been addressed in Committee, and we regret that Legal Affairs finds it necessary to send forward a dissenting opinion. We (DCO, ADM/PRO, BB) reiterate our willingness to support the recommendation as set out in the Minutes of the meeting.”

³² “so that the external auditors would have no complaints”.

³³ Unreferenced memorandum.

³⁴ See List of replies, Annex.

³⁵ On 1 December 2005, Legal Affairs sent a memorandum pertaining to the contract, following the memorandum of the Deputy Director-General. On 9 December 2005, a final written exchange took place between ADG/ED and the Director of Legal Affairs. Contract No. 5 was signed on 9 December 2005.

³⁶ As the fifth contract was originally scheduled to end on 31 July 2006, it violated that rule.

3.7 PROCEDURE FOR THE AWARD OF THE SEVENTH CONTRACT

48. After the experience gained from the first six contracts, greater familiarity with the procedure was shown in respect of the seventh contract. On 21 July 2006, a request for a waiver was addressed to the Contracts Committee, on the grounds that the situation was urgent and that Navigant had acquired exceptional knowledge of the Education Sector (*no other source of supply possible*). The Committee, considering that there was not enough evidence to support the request and that it could not make a recommendation, decided to submit the matter personally to ADG/ADM a.i., at the time the Comptroller (DCO), in the form of a memorandum from the Chairperson of the Contracts Committee in which approval was recommended: “since ED considers that it is essential to have the same team for this phase (...) and that the project could not be delayed, you may want to approve (...) on the non-negotiable condition that the entire fourth phase estimated at \$1.1m will be subject to international competitive bidding”.³⁷ The waiver requested was granted on 7 August 2006. The seventh contract, estimated at \$549,955, was signed by ADG/ED with the same firm, Navigant, on 11 August 2006.

3.8 PREPARATION OF AN EIGHTH CONTRACT

49. In a memorandum to the Comptroller dated 21 July 2006, ADG/ED wrote that “the issuance of the Phase 4 contract will be directly linked to the achievement of the objectives set out in the Phase 3 contract, running from January-December 2007. It will not exceed \$1.1M”.³⁸ Competitive bidding was considered for some of the services, in particular, those concerning information and knowledge management. However, as mentioned above, ADG/ADM ultimately approved the seventh contract subject on the non-negotiable condition that the eighth contract would be subject in its entirety to international competitive bidding.

4. ANALYSIS OF COMPLIANCE WITH THE SELECTION PROCEDURES

4.1 PREPARATION OF THE CONTRACT BY THE SECTOR

50. **Type of contract to be used.** The use of fee contracts appears a priori to be more appropriate than that of consultancy contracts.

51. **Estimate of the cost of the service that will be provided under the contract.** The documents held by the Sector contained no record of a prior estimate of the cost of the services to be provided or of a prior assessment of the tasks and the time required for their provision.

52. **Initial selection of the firm.** ADG/ED was the only person at UNESCO who had contact with a former manager at Navigant before the first contract was signed. He did not have contacts with other firms. ADG/ED informed us that prior exchanges with Navigant had taken place on one or two occasions in the United States of America in the spring of 2005. Exchanges that occurred during the pre-selection phase (preparatory document) have not been documented. The preparatory meeting consisted of a “pitch” or short commercial presentation of the firm. Exchanges with the firm when the first few contracts were being drawn up were also undocumented.

53. The auditors requested submission of messages exchanged before the signing of the contract between ADG/ED and the firm on three occasions. They have not been provided. The Secretariat has explained that “these messages are no longer available via DIT, it being UNESCO’s usual practice to delete all email messages after one month, unless the user expressly requests otherwise. Navigant has stated that it was against their policy to furnish that type of information”.

³⁷ Memorandum ADM/DCO/DCS/03/06-106 of 7 August 2006.

³⁸ “the issuance of the Phase 4 contract will be directly linked to the achievement of the objectives set out in the Phase 3 contract, running from January-December 2007. It will not exceed 1.1M\$”.

54. **Corporate profile.** The firm's public report for 2004 stated that "Navigant Consulting, Inc. is a specialized independent consulting firm providing litigation, financial services, healthcare, energy and operational consulting services to government agencies, legal counsel, and large companies facing the challenges of uncertainty, risk, distress and significant change. The company focuses on industries undergoing substantial regulatory or structural change and on the issues driving these transformations".³⁹ The firm, whose headquarters are in Chicago, Illinois, has offices in 34 cities in the United States of America and international offices in the United Kingdom, Canada and China. There is no branch office in Paris. The company's turnover in 2004 was \$482 million and it had more than 2,000 employees at the end of 2004, of whom 1,556 were consultants. Its main lines of activity are mentioned in the annual report: "The company's business structure consists of two business segments: Financial and Claims Consulting (87%) and Energy Consulting (13%)". Its turnover has to date been generated in the United States of America. "The company considers the following to be the company's key service offerings: litigation support and investigative services, claims management and analysis, corporate finance services, discovery services, government contracting services, and operations advisory and management process outsourcing services." Without passing judgement on the individual members of the Navigant teams who were active at UNESCO, it should be noted that only one (the manager and team leader) of the members listed in the proposal pertaining to the fifth contract had specific experience in the field of education. The other members of the team were advisory experts in the fields of energy, the military, technology, medical care, finance and international governance affairs. The Secretariat has stressed that "the team members, belonging to various operational divisions of Navigant, possessed the different capabilities and skills needed to address the questions arising at UNESCO in relation to the reform of the Education Sector which concern, in particular, changes in management and management structure, strategic orientation, harmonization, reform of basic processes (including budget and finances), planning and human resources. Moreover, the Navigant team brought with it a vast experience in change management and the use of advanced technologies".

55. The contracts were not assessed to determine their relevance and their conformity with regulations, as required under Item 700.24 of the Administrative Manual, using the "Assessment Form for consultancy or fee contracts" (Form 431).⁴⁰

From our viewpoint, Navigant's previous experience and its commercial position did not automatically make it the obvious choice. The decision not to consult any other company, if only for the sake of comparison, is unexplainable. By selecting the contracting firm without competitive bidding, ADG/ED and the Education Sector took the risk of not securing the procedural guarantees (conformity with Items 326 and 1025.3) that are designed to ensure, in a context of neutrality, that the Organization obtains the best service at the best price.

56. **Negotiation of consulting fees.** No consulting fee negotiations have been documented for any of the contracts. In relation to the first four contracts, Navigant stated that it was informed of a total amount available and was at liberty to inform UNESCO of the services that it could provide for that amount. ADG/ED stated that he discussed the fees for the first few contracts by telephone and obtained lower fees. ADG/ED considered that his judgement and professional experience enabled him to determine that the rates were reasonable. In respect of the fifth contract, the Deputy Director-General's instructions concerning the renegotiation of the price were not followed or, more precisely, were considered to have been respected by dividing the draft \$1.2 million contract into two contracts worth \$800,000 and \$400,000 respectively. ADG/ED asserted that Navigant Consulting granted a discount for public organizations and that the fees were lower than those

³⁹ "Navigant Consulting, Inc. is a specialized independent consulting firm providing litigation, financial services, healthcare, energy and operational consulting services to government agencies, legal counsel, and large companies facing the challenges of uncertainty, risk, distress and significant change. The company focuses on industries undergoing substantial regulatory or structural change and on the issues driving these transformations".

⁴⁰ The form is used to check that the proposed fee contract is relevant in programme and operational terms and in conformity with administrative and financial regulations and also to assemble all the prior authorizations and any waivers relating to it.

charged by other consulting firms (KPMG, cap Gemini, BCG, and so on). The discount consisted in lowering the fees charged for four of the 12 team members (\$350 per hour instead of \$550 per hour for the team leader). The size of the discount could not be verified because the two estimates submitted by Navigant (for the fifth, sixth and seventh contracts) are broken down by tasks but not by the length of time allotted to complete each task. Although a monthly fee was stipulated, it did not correspond to the rate for a full month but to an unknown number of days in the month. The invitation to tender had specified that particular format, which was not customary within the profession; a break-down of daily fees by type of professional, the estimate of the number of days, and sundry expenditures was not requested.

57. As the contract in question was a fee rather than a consultancy contract, the contractor was not required to provide a break-down of the fees. However, the Education Sector was under an obligation to conduct its own evaluation of the tasks and their cost, and failed to do so. Good practice, and common sense, might have led the Sector to ask the company, as part of the fee negotiation process, to submit a financial proposal consistent with customary professional practice. The obligation to negotiate the fees (Item 700 C.5.a) was not respected. The amounts of the fifth, sixth, and seventh contracts were identical to the fees proposed by Navigant. Financial proposals or estimates for the other contracts were not available.

58. The principle that contractors must be chosen on the basis of the best possible quality-price terms was not respected. Assessment of the relevance of the fees paid was made more complex by the lack of any statement indicating the presence of and time spent by members of the Navigant team on the premises.

59. **Sources of financing.** As at December 2006, six of the seven contracts awarded were being financed in full from the regular budget, accounting for 88% of the total fee of \$2,145,626. The Secretariat stated that the use of some lines of expenditure in the regular budget was temporary and that a series of “reimbursements” out of extrabudgetary funds was planned. Such reimbursements concerned the seventh contract (\$549,955), 90% of which would be financed from extrabudgetary funds provided, in particular, by Norway and Denmark. They also concerned the sixth contract (\$400,000), 95% of which would ultimately be financed from extrabudgetary funds. In conclusion, once the funds have been transferred, 41% of the contracts would have been financed from extrabudgetary funds and 59% from the regular budget.

The very informal nature of the fee negotiations in respect of the seven contracts and the complete lack of competitive bidding during the selection process has created the risk of the Organization being overcharged. In view of the budget available for financing activities, the cost already incurred for the Education Sector reform is \$2.1 million, 88% of which have been financed to date under the regular budget. The cost is likely to increase further, even if future financing will be drawn more from extrabudgetary funds, thus reducing amounts taken from the regular budget. It should be noted that the use of extrabudgetary sources of funds as from the sixth contract does not suffice to warrant consideration that the cost is now neutral. High costs that have neither been clearly approved nor budgeted and that have been incurred to monitor a reform rather than specific programme activities are not consistent with proper management of scarce resources, whether such resources are compulsory or voluntary contributions.

4.2 REASONS FOR THE WAIVERS GRANTED

4.2.1 Reasons of urgency (all contracts)

60. At its session held in Spring 2005, the Executive Board requested the Director-General to “develop a management framework for a decentralized and results-oriented education programme reflecting UNESCO’s specific contributions, especially in capacity-building for Member States, including those from its institutes and field offices, at the international, regional and country levels”

and encouraged him to “consider appropriate organizational changes which may be necessary in order to implement the above-mentioned management framework”. This particular item was not examined again at the session held in October 2005. No absolute deadline was set in the Executive Board’s request.

61. For several years now, the Executive Board has been urging the Sector to produce a global and detailed action plan for achieving Education for All. The Board has on several occasions called for progress, for example, in developing “a more specific and action-oriented plan with clear time-frames for action and, taking into consideration the mandate and unique contributions of each, determin(ing) a clear division of responsibilities among the EFA convening agencies.”⁴¹ In April 2006 the Executive Board set a deadline for the Secretariat, requesting that it “ensure that the revised global action plan is in a suitable state for review by the heads of the five convening agencies of Jomtien and Dakar as soon as possible, at the latest by mid-July 2006”. The Board “affirm(ed) strongly that the global action plan should reflect UNESCO’s leadership and coordination role in the global efforts to achieve the Dakar goals by 2015”⁴² and invited the Director-General to “submit to it at its 175th session an improved version of the global action plan, and to report on the consequences of the plan for the reorganization of the Education Sector and, following endorsement of the plan by the Executive Board and the heads of the five convening agencies, to report regularly on the implementation of the plan”. The Secretariat has stressed that “the pressure to produce rapid change came not from a particular document but from the cumulative effect of a series of factors, in particular, the appeals from outside calling on UNESCO to assume its world leadership role in the area of Education for All”.⁴³ The Secretariat has emphasized that ADG/ED participated in a working group, meeting at that same time as the Executive Board in April 2005, which drafted the aforementioned decision and that “it was obvious that changes would be needed in order to develop and implement the action plan” and that “the time factor was crucial”.

62. The Secretariat also mentioned UNESCO’s budget planning cycle, the scheduled inception of preparatory work on documents 34 C/5 and 34 C/4 in June 2006 and that if a “clear way forward” had not been defined for it, “the Sector would miss the opportunity to change and be faced with the prospect of two to six years of delay”. Lastly, the Secretariat stated that “several discussions held with various Members of the Board (...) confirmed that analysis” and that “many Member States firmly endorsed that option”, namely, the use of consultancy services.

63. While acknowledging the context described above, it must be pointed out that none of the Executive Board’s decisions or the documents mentioned encouraged the Education Sector, in its effort to effect such changes, to use exceptional and dispensatory procedures and to rule out competitive bidding for the award of such large contracts. Moreover, the Organization’s budget schedule (preparation of the Medium-Term Strategy for 2008 to 2013 and of the budget for 2007 to 2008, initiated in detail in October 2006) was not likely to hinder structural reform as a whole. This was evidenced by ADG/ED’s use, even in the framework of document 33 C/5, of resources to finance the consultants’ services and to make significant headway in the structural reform of the Sector. It is our view that ADG/ED, on his own initiative and out of a desire to “get things moving”, established an “aggressive schedule” (“given the aggressive schedule I have set because of my arrival”⁴⁴) and deliberately chose not to follow the Organization’s procedures and to dispense competitive bidding because a service contractor had already been chosen. The reason offered in justification of the request for a waiver for the first four contracts was “We are short of time”.⁴⁵ The

⁴¹ See annexed decisions of the Executive Board.

⁴² The decision continues: “Requests the Director-General to ensure that the global action plan defines better a dynamic role for UNESCO at the country and regional levels in support of country actions to achieve the EFA goals, and suggests that this role be initiated quickly through pilot work and in close cooperation with civil society”.

⁴³ Extract from the replies received “(...) and make progress in the achievement of the Dakar goals, and on the report of the United Nations Joint Inspection Unit and various decisions of the Executive Board, as well as on the nature of and the timetable for the planning cycle”.

⁴⁴ Memorandum of 20 June 2005.

⁴⁵ Memorandum by ADG/ED of 25 October 2005.

initial “urgent” commitment has led to collaboration and contracts that have been under way for 18 months. The actual duration of the project in the future was known (“Although the ultimate scope of the work I hope to achieve through this project is extensive, and clearly falls within the process for larger contracts culminating with the contracts committee, I need to begin immediately to create momentum in my early days on the job”, according to ADG/ED in his memorandum of 20 June 2005).⁴⁶ Recourse to competitive bidding, even on a small scale, would not have been so lengthy as to jeopardize the ultimate goal.

64. It is not permissible, in that regard, to use the term “urgent” in the sense of Item 1025.13 of the Administrative Manual of UNESCO, namely, a situation that is proven to be urgent by virtue of objective and pressing external circumstances (such as bad weather, safety works that must be undertaken to eliminate a safety hazard, and so on), and that effectively calls for urgent action, without leaving time for competitive bidding.⁴⁷

4.2.2 The “sole source” ground (seventh contract)

65. Item 1025.13 of the UNESCO Administrative Manual provides for the circumstance in which “there is an obligation for standardization or interchangeability of equipment, supplies or parts, and there is evidence that procurement must be from a specific source”. This wording applies to procurement of equipment the technical specificity of which obliges the Organization to use the same supplier, for example, in the case of the purchase of spare parts or repairs to a technical unit. The sole source principle is not meant to exclude competitive bidding for services of an intellectual nature. Furthermore, recourse to outside expertise (under a consultancy contract) must be temporary. Should the unavailable expert knowledge become permanently necessary, the sector is required either to establish a temporary post or recruit someone to fill an existing post.

66. The initial fractioning of the first series of contracts, which had the effect of avoiding the standard screening by the Contracts Committee, effectively gave a foothold to Navigant, whose services were then deemed indispensable. The application of the sole source principle to the case of the renewal of consultancy contracts served to validate the continued presence of the external experts, without clarifying the question of the date on which such support would no longer be necessary.

Urgency and sole source are not in our view well-founded grounds for the procedures that were followed.

4.3 EFFECTIVENESS OF COMPETITIVE BIDDING AND ACTION BY THE CONTRACTS COMMITTEE

67. The following paragraphs contain an analysis of the competitive bidding for the fifth contract and of the role of the Contracts Committee.

68. **Principle of competitive bidding by suppliers.** The consulting firm, Navigant, was initially selected without competitive bidding. ADG/ED stated that he used his professional judgement in choosing that firm. He also stated that the work had been divided into four small contracts so that the collaboration could, if necessary, be terminated on the basis of the quality of the results, in compliance with UNESCO regulations. The Secretariat stressed that “the reason for smaller contracts was to mitigate risk by exercising a degree of control over the contractor’s performance”

⁴⁶ “Although the ultimate scope of the work I hope to achieve through this project is extensive, and clearly falls within the process for larger contracts culminating with the contracts committee, I need to begin immediately to create momentum in my early days on the job”.

⁴⁷ The Director-General’s letter of 3 November 2006, addressed to the auditors and affirming that the mandate of the new ADG/ED was specifically to reform the Education Sector and that this was an urgent matter, cannot be regarded as an objective circumstance necessitating an exemption from the application of the Organization’s administration and financial rules and regulations.

and that it was “prudent contract management” because it enabled the Secretariat to have “an exit strategy”. The “preparatory work” afforded the Secretariat “an opportunity to (...) verify the quality of the work being done by the consultants”.⁴⁸

69. In regard to that point, it should be noted that “prudent contract management”, in this particular case, amounted to failure to comply with the Organization’s basic rules and regulations, such as competitive bidding and review of the largest contracts by a collegial body. The main effect of dividing the contract into four was to avoid having recourse to the Contracts Committee. Such recourse was deliberately avoided, as demonstrated by the memorandum of ADG/ED of 20 June 2005⁴⁹ and the Contracts Committee’s lack of information, despite discussions held with the Administrative Officer and the Office of the Executive Officer in July 2005 when the second contract was being drawn up.

Comments by the Director-General

On the issue of the “fractioning of the contracts”, the reason for smaller contracts was to mitigate risk by exercising a degree of control over the contractor’s performance.

70. **Choice of the restricted bidding procedure.** The reasons for choosing restricted bidding – without prior expression of interest – are not known. Prior expression of interest would have lengthened the procedure by two or three weeks and would have ensured that motivated contractors were identified. In our view, an additional delay of two to three weeks would not have been prejudicial in the case of a contract award of more than seven months’ duration. Under those conditions, no attempt was made to determine whether the six companies intended, at least initially, to submit a bid.

71. **Criteria for the shortlisting of companies.** The aim of the shortlisting process is generally to identify firms that have recently done work for UNESCO and which have done quality work⁵⁰ or are international in scope. Those criteria were not fully met by all of the firms concerned: UHY Global, Advanced Dynamics and McKinsey had never worked for UNESCO. Advanced Dynamics had a small staff, as did the two firms that had already worked for UNESCO (Mannet and Martin Jenkins Associates). The size and the workload of those firms made it impossible for them to handle such a large project within the deadlines set by UNESCO. By contrast, several firms that had recently worked for UNESCO were not on the list (Accenture, PWC, Deloitte) or had even been struck off deliberately. With the exception of McKinsey, no company based in Paris – regardless of nationality – had been placed on the list. Two of the six companies were based in Oceania (New Zealand and Australia) and travel costs and distance would foreseeably be obstacles to the submission of a competitive bid for a long-term project.

As constituted, the list of firms consulted, while appearing to comply with the regulations, considerably reduced, *de facto*, the possibility of a candidate other than Navigant Consulting submitting a bid. The list was not designed to maximize the possibility of identifying competitors that could actually submit a bid. The probability of a bid from any company other than Navigant was low. The selection criteria do not seem to have aimed directly at effectively finding actual competitors.

72. **Different dates of receipt of the candidates’ bids.** No follow-up action was taken immediately after the dispatch of the request for proposal (21 September 2005) and the evidence of dispatch provided consisted of a message header, with no text and no indication of documentary

⁴⁸ The work could thus begin under limited contracts with measurable results, from which UNESCO could withdraw rapidly if the quality of the work was not acceptable. If the contractor had failed to perform to the required standard, it would have facilitated the termination of the contract and the Sector could have had recourse to another company for the following contract.

⁴⁹ See paragraph 63.

⁵⁰ Memorandum of 20 October 2005 from ADG/ED to the Contracts Committee – 110/ED/EO/CTP.

enclosures. The report concerning the opening of bids stated that the request for proposal was issued on 10 September: that date might have been mentioned in the Navigant company's documents or provided by the representatives of the Sector present. Navigant Consulting stated that it received a paper copy of the request for proposal (date unspecified) and an electronic version on 21 September. Two firms (UHY and McKinsey) reported either having received only a reminder or a request for proposal after the closing date. Details of the messages and replies are annexed hereto. While acknowledgement of receipt was not required under the procedure, good practice (and common sense) dictated that some effort be made to ascertain that the firms in question had actually received the message. In the circumstances, only one bid was submitted to UNESCO.

73. **Specifications set out in the request for proposal.** The criteria contained in the request for proposal did not comply with the principle of neutrality in the competitive bidding process. Indeed, the terms of reference stated that: "The consultant company should have recent and extensive knowledge of UNESCO Education Sector processes, culture, personnel and programmes (to minimize diagnostic time and speed implementation)."⁵¹ In that regard, one of the companies invited to bid stated in its response: "Furthermore, the selection criteria suggest that you are looking for a firm that you already engage with rather than a fresh approach."⁵² The terms of reference of the contract that was finally signed repeated Navigant's proposal practically word for word, instead of repeating the terms of reference of the initial request for proposal.

74. **Review by the Contracts Committee.** The Contracts Committee examined a contract involving the firm Navigant for the first time on the occasion of the restrictive competitive bidding for the fifth and sixth contracts, that is four months after the ceiling of \$100,000 had been exceeded.

75. Not all of the members of the Contracts Committee considered that note should be taken of the ineffective nature of the competitive bidding process. The representative of the Office of International Standards and Legal Affairs noted the inconsistencies in the competitive bidding process. The other three members of the Contracts Committee (DCO, PRO and BB) ultimately decided that they were satisfied with the cost and the procedure. They considered that the competition had not been proven to be biased and noted that it would have been preferable to give the companies contacted more time. The Committee did not verify the relevance of the services offered by the firms on the list or the actual content and effectiveness of the bidding process. The majority of the Committee members chose to conduct a formal evaluation, considering that it was not within their mandate to demonstrate that the competitive bidding process had been deliberately flawed.

76. **Information transmitted by the Sector to UNESCO management in support of the requests for approval.** The information transmitted to the Deputy Director-General appears to have been incomplete on two occasions. In regard to the request for approval of the first few contracts, the information provided gave the impression that the planned competitive bidding process had not begun,⁵³ when it had already taken place, the single bid received had already been opened, and the Contracts Committee had already expressed reservations. Furthermore, the evidence of the dispatch of the request for proposal to the six pre-selected firms and the replies of most of those firms had been altered. The sentence, "Furthermore, the selection criteria suggest that you are looking for a firm that you already engage with rather than a fresh approach" had been deleted from Advanced Dynamics' reply, which continued "Should there be an interest in exploring a different approach to improving the effectiveness of UNESCO, we would be very happy to engage in a conversation about this. Ideally, this should precede any request for proposal because

⁵¹ The consultant company should have recent and extensive knowledge of UNESCO Education Sector processes, culture, personnel and programmes (to minimize diagnostic time and speed of implementation).

⁵² See reply from Advanced Dynamics, Annex, List of full replies.

⁵³ Note ADG/ED of 25 October 2005 to the DDG, "I would also mention to you now that there will be a larger contract that will be opened to competitive bidding".

the conversation would enable you to consider some innovative approaches that may not be available from the firms you currently engage with”.⁵⁴

4.3.1 Nature of the approvals granted

77. In regard to the first four contracts (\$400,000), a memorandum requesting a waiver dated 25 October 2005 was sent to the Deputy Director-General, ADG/ADM a.i.⁵⁵ For three of the four contracts, a request was made for ex post approval, which was not provided for in the Administrative Manual; furthermore, the request for approval was addressed directly to the Deputy Director-General, thus bypassing the Contracts Committee, the competent authority for examining requests for waivers. The putative agreement in principle given by the Deputy Director-General, on the basis of a discussion in June, and mentioned in the memorandum of 20 June 2005, does not seem to constitute a valid basis for the first four contracts. It was ADG/ED who in effect approved the contracts.

78. The fifth and seventh contracts (\$800,000 and \$549,000) were approved by ADG/ADM a.i. There was no express request for external approval for the sixth contract (\$400,000). The Deputy Director-General stated that his memorandum covered not two, but only one contract, namely the contract that was budgetarily feasible at the time and could amount to \$800,000. The memorandum did refer, however, to the minutes of the Contracts Committee’s meeting, which explicitly mentioned the likelihood of an amendment amounting to \$400,000. The contract was approved and signed by ADG/ED.

4.4 MONITORING OF CONTRACT PERFORMANCE

79. ADG/ED stated that he himself read and approved the deliverables, which he described as having “incredible value”. They had not been distributed systematically. The deliverables of the first four contracts were not immediately available when requested by the auditors in preparation for their mission and had to be requested again from the consulting firm. ADG/ED considered that it was the Administrative Officer’s responsibility to keep the deliverables on file, although that was not borne out by the Administrative Manual. However, many documents relating to the reform of the Education Sector and many communications from ADG/ED and the Director-General about the reform were available on the Organization’s Intranet.

80. The services provided (moderation of seminars and diagnostic documents) are detailed in four thick document folders (texts, PowerPoint presentations and post descriptions).⁵⁶ The Navigant consultants held interviews and applied the analytic principles of their management model to UNESCO. It was on the basis of their work that ADG/ED took decisions regarding the reform of the Sector.

81. The Secretariat emphasized the “extensive activity and preparatory work underpinning each of the paper deliverables” and stressed that the work accomplished was “profound and comprehensive (...). First there is generic work behind the work – management, logistics, etc. (...) The consultant team (...) organized and managed the reform process under the oversight of ADG/ED and assigned staff”.⁵⁷

⁵⁴ “Furthermore, the selection criteria suggest that you are looking for a firm that you already engage with rather than a fresh approach. Should there be an interest in exploring a different approach to improving the effectiveness of UNESCO, we would be very happy to engage in a conversation about this. Ideally, this should precede any request for proposal because the conversation would enable you to consider some innovative approaches that may not be available from the firms you currently engage with”.

⁵⁵ At that date, the first four contracts had already been signed.

⁵⁶ The list is annexed hereto.

⁵⁷ The Secretariat stated the following: “An overall project team structure was created for Phase II of the Education Sector Reform. Seven working teams were established: Reform Leadership; Organization Alignment; Strategic Alignment and direction; Personnel (Human resources) Reform; Budget Reform; Planning Team; and Information Management Initiative Team. The teams were formed for two very important reasons. First, each had a specific

82. It was not within the scope of this report to evaluate the content of the reform and the choices made. An overall examination of the deliverables and their compliance with the contract provisions revealed that the same document was submitted and paid for under two different contracts. The document in question “Results of a diagnostic review of the Education Sector of UNESCO: findings, recommendations and presentation of a conceptual framework”, was first dated 31 October 2005 and submitted as a deliverable under contract No. 4500026337 (summation report),⁵⁸ and was then subsequently dated November 2005 and submitted in a slightly different format, as a deliverable under contract No. 4500027678 (final payment).⁵⁹

Comments by the Director-General

The Secretariat has explained that the work conducted under those two contracts was completely different. The terms of reference of the third contract stipulated that an analysis of the Sector’s problems should be undertaken, in consultation with partners outside the Sector and members of the UNESCO Secretariat, and that recommendations for reform should be made to ADG/ED. According to the terms of reference of the fourth contract, the conclusions of the preceding contract (problem analysis) would serve as the basis for the discussions that were to be held at the seminar, moderated by Navigant, for Education Sector staff in November 2005, at which 280 members of the Sector conducted a comprehensive examination of the document. The recommendations contained in the report were also endorsed by the Directors of the Sector at another meeting which was also moderated by the consultants. In the case of each contract, the fee paid to Navigant covered not only the paper deliverables but also the prior consultations and discussions.

The items in the Administrative Manual that were not observed (Items 700, 326,1025) are rules (competition and price negotiations) which protect the Organization and are vital to the management of the compulsory and voluntary contributions of the Member States. Furthermore, without underestimating the work accomplished, the high cost of the services provided and the accumulation of such high costs since June 2005 should be noted. The second contract was used to finance the firm’s moderation of a three-day seminar in July 2005, at a cost of \$100,000. Finally, it should be mentioned that the consultants’ recommendations relate for the most part to non-specific “model processes” (information management, knowledge management, portfolio management, etc.) and address very few of the specific activities that UNESCO is required to carry out in the field of education.

Comments by the Director-General

ADG/ED has expressed satisfaction with the value of the work performed by Navigant, which is not only reflected in the paper deliverables but also includes broad and thorough external and internal consultations, analysis and formulation of recommendations to give effect to the reform. One of the major concerns raised by the report is its insufficiently broad treatment of the importance and scope of the “deliverables”, giving the fact that extensive activity and preparatory work was required for each of the paper deliverables.

scope of work that had to be accomplished. These work activities provided the basis of the Phase II recommendation report; that is, team output served as the basis of the chapters in the final deliverable. Second, the beginning of Phase II was the appropriate time to create broader involvement in and build consensus for sector reform. Team composition covered Director and Professional levels from Headquarters, institutes and the regions. Over thirty people from the Education Sector participated. The teams were both co-led and supported by ten Navigant consultants”.

⁵⁸ Payment claim 31/10/2005 for \$49,899 for “report of overall findings and recommendations for reform”.

⁵⁹ Payment claim 13/12/2005 for \$50,000 for item (iii) of the contract: “continue to conduct *interviews with Education Sector Staff from Headquarters and the field offices and prepare a report that further develops and refines the initial recommendations, incorporating results and conclusions drawn from Education Sector seminar and the interaction with the Education Sector staff*”.

Table No. 5 Summary of the procedures followed

Contract number and amount	Competitive bidding	Negotiation of contract fees	Approval of contract	Request for waiver in accordance with provision in the Administrative Manual
Contract No. 1	No	No	ADG/ED*	No
Contract No. 2	No	No	ADG/ED*	No
Contract No. 3	No	No	ADG/ED*	No
Contract No. 4	No	No	ADG/ED*	No
Contract No. 5	Ineffective	No	ADG/ADM a.i.	Not required
Contract No. 6	No	No	ADG/ED	No
Contract No. 7	No	No	ADG/ADM a.i.	Yes, but not recommended by the Contracts Committee

* Verbal approval in principle by DDG.

5. COMMENTS AND RECOMMENDATIONS

5.1 INTERPRETATION OF THE RULES IN FORCE AT UNESCO IN RESPECT OF WAIVERS

5.1.1 The Director-General is empowered to waive advertising requirements

83. UNESCO's functions are governed by specific texts (Constitution, Financial Regulations and the Administrative Manual) and, more broadly, by general principles of law.⁶⁰ Article 10 of the Financial Regulations covers the principal arrangements for internal control. In particular, Article 10.1(a) provides that the Director-General shall establish "detailed financial rules and procedures in order to ensure effective financial administration and the exercise of economy". Article 10.5 provides that "(t)enders for equipment, supplies and other requirements shall be invited by advertisement, except where the Director-General deems that, in the interests of the Organization, a departure from the rule is desirable".

84. The Financial Regulations permit but do not regulate waivers of the rules of advertising and competitive bidding. By contrast, waivers are specified in detail and regulated by the Administrative Manual. The Manual is established by the Director-General, pursuant to Article 10.1 of the Financial Regulations: "The UNESCO Manual, which is established by the Director-General, lays down the principles and defines the methods of administration applicable to the implementation of the Organization's mandate and followed by the Secretariat in the exercise of its functions."⁶¹ The Manual stipulates that in regard to contracts estimated at less than \$100,000, it is for the head of the sector, and in respect of contracts estimated at more than \$100,000, it is for the Contracts Committee, to authorize the waiving of advertising and competitive bidding, stating reasons for such action, having regard to a list of limiting considerations.

85. Most noteworthy is the position of the United Nations itself, whose Financial Regulations and Rules, in Article 10.5, contain the same as that of UNESCO. Documents A/CN.4/L.383 and A/CN.4/L.383 Add. 1-3 (1982) contain a legal analysis which concludes that Article 10.5 of the

⁶⁰ The Convention establishing a United Nations Educational, Scientific and Cultural Organization (Constitution), adopted in London on 16 November 1945, provides for the adoption by the General Conference of Financial Regulations (Article IX-3). The Financial Regulations may be amended only by a two-thirds majority of the General Conference (Rule 85 of the Rules of Procedure of the General Conference). The Financial Regulations were adopted by the General Conference at its 6th session and have subsequently been amended several times.

⁶¹ The quotation continues as follows: "It is based essentially on the provisions of the UNESCO Constitution, the resolutions of the General Conference, the decisions of the Executive Board, the Staff Regulations and Staff Rules and the Financial Regulations, as appropriate".

Financial Regulations can only be understood and applied in the context of the specific details laid down in the organization's administrative and financial rules.⁶²

86. The provisions of the Financial Regulations and the Administrative Manual are clear and do not, in our view, call for interpretation, which is provided for under Article 14.2 of the Financial Regulations.⁶³

5.1.2 The power to grant waivers is not arbitrary

87. The Administrative Tribunal of the International Labour Organization rules on disputes involving staff and has also established, on the basis of its rulings, a series of general principles of law that are broader in scope and apply to UNESCO as a specialized agency of the United Nations. These general principles, which govern the activities of all United Nations organizations, are set out below:

When the authority has discretionary power, such power applies to the rules and regulations that have been issued by the authority itself: "Any authority is bound by the rules it has itself issued until it amends or repeals them. The general principle is that rules govern only what is to happen henceforth."⁶⁴ Moreover, the Director-General is required to justify any decision made in the exercise of his discretionary power: "Although the Director-General can determine the interest of the agency, his decisions must be based on clear and coherent reasons."⁶⁵

The power to grant a waiver is a discretionary power, in that it is a question of the Director-General's appraisal of the matter, but it is not an arbitrary power beyond the scope of any rule. In the case under consideration, the Director-General may only use his power to grant a waiver when he deems that it is in the interests of the Organization to do so (Article 10.5 of the Financial Regulations), which presumes that such a decision is well-founded in respect of the interest in question. Furthermore, the Director-General is bound by the rules he himself has issued, unless he amends or repeals them. The case under consideration here falls within the scope of the Administrative Manual's provisions establishing the circumstances in which the rules governing competitive bidding may be waived. These rules stipulate that requests for waivers must be reviewed in the light of an exhaustive list of predefined and limited conditions by the Contracts Committee, which shall document its review. The circumstances in which advertising and competitive bidding may be waived and the arrangements for so doing are set out in the Administrative Manual issued by the Director-General pursuant to the Financial Regulations. Any interpretation of Article 10.5 of the Financial Regulations that embraces the possibility of departing, on a case-by-case basis and without reference to the conditions defined, from the general rules of the Manual would confer on the Director-General an arbitrary power that would run counter to the general principles of law and the proper management of the Organization. The Secretariat has stated that it endorses that interpretation of Financial Regulation 10.5.

⁶² Article 10.5 of the Financial Regulations stipulates that, in general, contracts for equipment, supplies and other requirements are awarded on the basis of competition, with prior advertising. (...) Contracts are usually awarded following competitive bidding. Formal invitations to tender are either published or distributed directly. If the nature of the work prohibits competitive bidding, and a formal invitation to tender is issued, a written record of the comparative analysis of the bids is made. Contracts may be awarded without advertising or competitive bidding when the value of the contract is less than \$2,500 (...) it being understood that the order must conform to certain specifications (Rule 110.19). Other derogations may be made in the case where the prices are fixed by legislation (Rule 110.19b), where the subject of the contract is regarded by the Organization as a priority or particularly urgent (Rules 110.19 c to g), or where the Under-Secretary-General for Management determines that a competitive bidding or invitations to tender will not give satisfactory results (Rule 110.19 h). This interpretation of Article 10.5 of the Financial Regulations of the United Nations is a paraphrase of the Administrative Manual.

⁶³ Financial Regulation 14.2 stipulates that: "In case of doubt as to the interpretation and application of any of the foregoing Regulations, the Director-General is authorized to rule thereon".

⁶⁴ Judgment No. 963 of 27 June 1989. Similarly, in its Judgment No. 1025 of 26 June 1990, concerning the rules for the appointment of a civil servant, the Tribunal considered that "the executive head must conform to the rules he has issued because they are binding in law".

⁶⁵ Judgment No. 2125 of 15 July 2002.

88. The various officials responsible for internal control are required to ensure that the rules set out in the Administrative Manual are consistent, as appropriate, with the general objectives and rules of law. The Comptroller, the Director of the Office of International Standards and Legal Affairs and the Internal Auditor of UNESCO must therefore ensure that the rules contained in the Administrative Manual and the Organization's practices are consistent with the general principles of law.

5.2 RECOMMENDATIONS

89. **The independence of Administrative Officers (AO)** must be strengthened by reclassifying their posts in terms of grade, thus providing a genuine counterweight to the power of those ordering expenditure, by reasserting the supervisory link to the Division of the Comptroller, and by reaffirming the role vested in that Division and in the Comptroller in regard to the internal financial control system and in the implementation of Article 10.1(d) of the Financial Regulations.⁶⁶ The person responsible for internal financial control (AO) is not always in a position to enforce compliance with the Organization's regulations. It should be noted that the *de facto* subordination of the AO to the head of sector (ADG/ED, in this instance) is a weak point in the internal control mechanism. One of the requirements of internal control is strict separation between purchaser and payer. In practice, the position of Administrative Officer does not guarantee such independence.

Comments by the Director-General

The need to strengthen the independence of the Administrative Officers is noted and internal discussions on this matter have already commenced. One option which the Secretariat will explore will consist in formally placing, in line with the job description of the newly established post of Director of the Office of Financial Services in the Education Sector, all Administrative Officers under an obligation to report to the Office of the Comptroller and to assign them clear performance objectives.

90. **A reminder must be issued in respect of the rules and regulations on waivers:** It is suggested that the legal grounds for granting waivers should be restated and be made more precise in the Manual, if necessary:

- first, recalling the decision-making role of the Contracts Committee, a collegial body representing the various units, in respect to requests for waivers, or at least clarifying the potential ambiguity arising from the discrepancy in the wording of Items 1025 and 330 (326) of the Manual;
- recalling that the Financial Regulations have conferred upon the Director-General the right to depart from the rules of advertising and competitive bidding, that the Director-General, in pursuance of the Financial Regulations, has established rules regulating the conditions for granting such waivers and that no departure may be permitted from those rules, other than to amend the framework for the future;
- and, lastly, reaffirming that the only possible cases in which waivers may be granted are those covered by Item 1025.13. Any revision of the list should not result in the establishment of an over-general category such as "when the interest of the Organization so requires".

91. The practice of giving the ADG/ADM the role of arbiter in granting waivers is based on a generous interpretation of the threshold of intervention of the Contracts Committee in approving

⁶⁶ "The Director-General shall (...) (d) maintain an internal financial control and internal audit which shall provide for an effective current examination and/or review of financial transactions in order to ensure: (i) The regularity of the receipt, custody and disposal of all funds (...) (ii) The conformity of obligations and expenditures with the appropriations (...) voted by the General Conference or with the purposes and rules relating to Trust Funds (...) (iii) The economic use of the resources of the Organization."

contracts or making a recommendation, and of Item 326.27, which provides that disagreement between the Contracts Committee and the contracting unit as to the beneficiary of the contract is to be settled by the Assistant Director-General for Administration. The rules concerning waivers do not explicitly provide for arbitration by ADG/ADM. Consideration may be given in this particular regard to requiring that the Contracts Committee reach a unanimous decision or, failing such unanimity, that, on the basis of minutes of the Committee setting out the divergent opinions, the matter be referred to the Director-General to decide *in fine* and in person on any departure from the application of the rules essential to the smooth running of the Organization, on condition that the Manual so provides.

Comments by the Director-General

The Director-General has taken immediate steps for the conduct of a review of the relevant procurement rules and procedures. This will include a review of the existing provisions of the Manual, in particular to ensure that they are in conformity with the Financial Regulations approved by the General Conference. Any amendments to the regulations will comply with Financial Regulation 10.5. The Secretariat agrees in principle with the audit's findings that the Contracts Committee's delegated authority should be clear and observed. Steps have already been taken to improve due diligence procedures as recommended in paragraph 92 below.

92. The lack of separation between the roles of the officer who identifies the need for procurement, the officer who organizes procurement and the officer who accepts deliverables must be resolved. In the case of the procurement of intellectual services, for instance, as the procedure stands at present, the same person may identify the need for procurement, choose the vendor, draw up the contract without respecting standard contractual provisions, accept and validate the deliverables, and authorize payments to the vendor. Others should be involved in the procedure: the Procurement Service should be able to organize procurement procedures.

Comments by the Director-General

*The Secretariat will review the existing procedures to address the concern.*⁶⁷

93. All officials must have better knowledge of the rules of the Administrative Manual. Compulsory training on the content of the Administrative Manual, which should also include the ethical dimension of compliance with the rules, should be organized for new arrivals and also for officers who, by the nature of their duties, incur high levels of expenditure. Everyone must be familiar with the rules of the Manual. They protect the Organization and provide officers with a framework to guide their action in a manner consistent with the interests of the Organization.

Comments by the Director-General

The Secretariat agrees that it is important to ensure that each sector exercises due diligence in performing its tasks and in training and raising the awareness of all those involved in all procurement procedures.

94. The Organization's system of disciplinary measures must be clarified and supplemented. At present, any staff member may be held financially responsible under Staff

⁶⁷ There are currently three distinct and separate financial roles for each procurement action as explained in the Tables of Delegated Authority and Accountability (Administrative Manual Appendices 3A and 10B): (i) approving officer (ADG or delegated officer) authorized by the Director-General to commit funds vis-à-vis parties by concluding contracts; (ii) certifying officer (Administrative Officer) designated by the Comptroller to examine contracts and related obligations, ensuring conformity to Financial Rules and Regulations; (iii) paying officer (DCO), with responsibility to disburse funds after examination of the payment request. A fourth separate role to receive goods and services is not necessary. The approving officer is best placed to have the necessary competence to evaluate the quality of services rendered in terms of logic of procurement.

Rule 101.2, which states that “any staff member,⁶⁸ who, by malice or culpable negligence, or by failure to observe any regulation, rule or administrative procedure of the Organization, involves the Organization in unnecessary liability, expense or loss, shall be held responsible, and may be required to pay compensation therefor”. It should not be possible to validate *a posteriori* acts committed with the intention of circumventing the rules of UNESCO. To ensure effective compliance with the rules, it is considered that there must be provisions for sanctions in the event of breach and mechanisms for ruling on such sanctions. The steps taken by the Director-General to disseminate the United Nations Standard of Conduct to all staff members are duly noted.

Comments by the Director-General

As part of the establishment of an Ethics Programme at UNESCO, the Director-General has already undertaken publicly to launch the process of developing appropriate disciplinary measures under the Staff Regulations and Staff Rules, not restricted to the specific subject of the non-application of procurement rules but rather concerning observance of the Standards of Conduct of the International Civil Service.

95. Mechanisms must be established to monitor contracts above the \$100,000 threshold and to monitor compliance with contract procedures. Until October 2005, a Quality Control Unit established by the Financial Control and Services Section within the Division of the Comptroller (ADM/DCO/FCS) checked FABS periodically to identify contracts that exceeded the threshold. The Unit detected very early, in August 2005, contracts that exceeded the threshold for one vendor and alerted the Chairperson of the Contracts Committee. Owing to understaffing, the Unit has not been operational since October 2005. In other words, one of the only contract award control mechanisms is now inoperative owing to a lack of resources.

Comments by the Director-General

Several posts have not been filled owing to the severe budgetary constraints imposed by a zero nominal growth budget. The lack of resources has now been recognized by top management and the abolished post is being reinstated in draft document 34 C/5.

⁶⁸ Staff Rule 104.11 bis and Item 2440.

ANNEX 1
Full replies made in October 2005 to the invitations to tender

Firm	Date of dispatch	Reminder (if any)	Date of reply	Content of reply	Comment
Advanced Dynamics	Email 21/09/05		22/09/05	<p><i>Full response:</i></p> <p><i>“Advanced Dynamics would be very interested in engaging with UNESCO on improving effectiveness. We are a highly respected firm that works across all sectors with a view to contributing to the well-being of society. We do this through a highly collaborative approach which builds capability in the organizations that we engage with. Our approach is strategic in that it starts by developing an understanding of the dynamics of the current system and then moves to changes in the system that will create the desired outcomes. Our reputation and successes mean that we experience high demand and are fully committed for 2005.</i></p> <p><i>“It would seem that under these circumstances, we cannot meet your timetable. <u>Furthermore, the selection criteria suggest that you are looking for a firm that you already engage with rather than a fresh approach.</u> Should there be an interest in exploring a different approach to improving the effectiveness of UNESCO, we would be very happy to engage in a conversation about this. Ideally, this should precede any request for proposal because any request for proposal because the conversation would enable you to consider some innovative approaches that may not be available from the firms you currently engage with. Please call me on one of the numbers below if you would like to discuss this further.”</i></p>	Only the underlined part was sent by memorandum dated 24/11/05, attached to the minutes of the Contracts Committee meeting held on 4 November, to the DDG, acting as ADG/ADM, to prove that a reply had been received from the firms contacted (copied and pasted part of the original message). See 1.1.5. below
Martin Jenkins Associates	Email 21/09/05	Email 22/10/05	Email 26/10/05	<i>“Unfortunately, I have been out of the country until today. Due to prior commitments, we are unable to put in a tender for this work at this time”</i>	-
UHY	Email 21/09/05	Email 21/10/05	21/10/05	<i>“We received your courriel and attached Request For Proposal today, Oct 21, 2005. Has the closing date for response been extended beyond Oct. 17?”</i>	-
ManNet	Email 21/09/05	Email 21/10/05	Email 22/10/05	<i>“We decided not to submit a bid and informed you accordingly. If you haven’t received our communication, please accept my apologies.”</i>	-
McKinsey & Co	Fax 21/09/05 (receipt acknowledged OK)	Email 27/10/05	Email 26/10/05	<i>“We received this proposal unfortunately we will not be able to reply as the closing date was on October 17th.”</i>	-
Navigant Consulting	Hard copy provided (date unknown) email 21/09/05		17/10/05	Bid opened in the presence of witnesses on 20/10/05	The only bid received.

ANNEX 2

Summary table of deliverables of the first six contracts

The titles and description of the deliverables are in English (untranslated original texts)

Contract No. 4500024765 signed on 23/06/2005 (No. 1)				
Expected deliverables	Contracted date of delivery of the work	Deliverables received (file name communicated to the External Auditor)	Date of receipt of deliverables	Comments on the deliverables
Interview guide	5/07/2005	(1) DIAGNOSTIC GUIDE V3 7-5-05 (6 pages)	Submitted to ADG/ED on 7/07/2005 but there is no record (email received, dispatch note, etc.) attesting to the date.	The deliverables under contracts Nos. 1 and 2 (and the deliverables under contracts Nos. 3 and 4) were not directly available at the beginning of the audit. They had to be requested again from Navigant Consulting.
Complete interviews	16/07/2005	(2) LIST OF PERSONS INTERVIEWED (1 page)	No record (email received, dispatch note, etc.) attesting to receipt.	
Final payment	20/07/2005	(3) HQ Interview Program Findings.ppt (30 pages)	Made on 20/07/2005 but not recorded (email received, dispatch note, etc.).	No details provided on the expected deliverable for which the last instalment was paid under the contract. The report submitted is a PowerPoint presentation of the HQ Interview Program Findings.

Contract No. 4500025476 signed on 26/07/2005 (No. 2)				
Expected deliverables	Contracted date of delivery of the work	Deliverables received (file name communicated to the External Auditor)	Date of receipt of deliverables	Comments on the deliverables
<i>Facilitation leadership retreat</i>	24/07/2005	(4) <i>Retreat.ppt (29 pages)</i> (4.a) <i>Team 1.ppt (9 pages)</i> (4.b) <i>Team 2.ppt (8 pages)</i> (4.c) <i>Team 3 (4 pages)</i> (4.d) <i>Team 4.ppt (12 pages)</i>	No record (email received, dispatch note, etc.) attesting to receipt.	<i>Retreat.ppt: consisted of a PowerPoint presentation made between 22 and 24/07/2005 during the Education Sector's retreat at Enghin-les-Bains. Reports by 4 teams formed during the retreat.</i>
<i>Preparation BGK meetings</i>	24/08/2005	(5.a) <i>Further Staff Consultations under Contract 2 (1 page)</i> (5.b) <i>COURRIEL NOTIFICATION ON COMPLETION (2 pages)</i>	No record (email received, dispatch note, etc.) attesting to receipt.	<i>A list of staff with whom individual meetings were held to document further the workshop results and findings from earlier interview programs. Prepared for and attending regional meeting in Bangkok A list of persons interviewed in Bangkok was provided in hard copy to the ADG with subsequent courriel notification to the DADG of completion of Bangkok meeting and interviews. List of regional office and cluster office staff interviewed.</i>
<i>Summation report</i>	13/09/2005	(6.a) <i>UNESCO regional interviews v3.ppt (32 pages)</i> (6.b) <i>Draft Management Framework v5.ppt (20 pages)</i>	Receipt on 12/09/2005, but not recorded (email received, dispatch note, etc.).	<i>A PowerPoint presentation titled Regional Interviews summarizing and reporting findings from regional and field office interviews referenced above was shared in draft with ADG on August 12. A PowerPoint report titled Draft Management Framework (prepared based on analysis of results and inputs), which contained the hypothesis for a new Management Framework was presented to the ADG.</i>

Contract No. 4500026337 signed on 12/09/2005 (No. 3)				
Expected deliverables	Contracted date of delivery of the work	Deliverables received (file name communicated to the External Auditor)	Date of receipt of deliverables	Comments on the deliverables
<i>Completion meeting external stakeholders</i>	15/10/2005	<i>(7) External_Country and other_appointments (1 page)</i>	No record (email received, dispatch note, etc.) attesting to receipt.	<i>A list of all external stakeholders, including country representatives, interviewed under this Contract and during the period of the previous contract (Contract 2). The deliverable is merely a list of persons met between 14/09/2005 and /10/2005.</i>
<i>Summation report</i>	31/10/2005	<i>(8) UNESCO FINAL DRAFT REPORT V7 (46 pages)</i>	Receipt on 12/09/2005, but not recorded (email received, dispatch note, etc.).	<i>A Report dated and delivered on the results of the Diagnostic Review completed based on work undertaken under contracts 1-3. The deliverable of the third contract was drawn up on the basis of work done under the first 3 contracts. The deliverables are particularly unclear: "meetings with external stakeholders" and "summation report". Despite the high cost of these services, no quality evaluation mechanisms were put in place.</i>

Contract No. 4500027678 signed on 3/11/2005 (No. 4)				
Expected deliverables	Contracted date of delivery of the work	Deliverables received (file name communicated to the External Auditor)	Date of receipt of deliverables	Comments on the deliverables
<i>ED Seminar</i>	15/11/2005	<i>(9) Findings and Recommendations.ppt (38 pages)</i>	No record (email received, dispatch note, etc.) attesting to receipt.	The deliverable is a PowerPoint presentation made at an Education Sector seminar held between 7 and 10/11/2005.
<i>Final payment</i>	30/11/2005	<i>(10) UNESCO FINAL REPORT- RESULTS OF DIAGNOSTIC REVIEW (56 pages)</i>	No record (email received, dispatch note, etc.) attesting to receipt.	No details provided on the expected deliverable for which the last instalment was paid under the contract. <i>The UNESCO Final Report - Results of Diagnostic Review, which was finalized after extensive consultations with Education Sector personnel from Headquarters and the field during November 2005</i> The title and content of the report “Findings and Recommendations.ppt” is identical to the report “UNESCO FINAL DRAFT REPORT V7” submitted for the previous contract (No. 3).

Contract No. 4500028835 signed on 9/12/2005 (No. 5)				
Expected deliverables	Contracted date of delivery of the work	Deliverables received (file name communicated to the External Auditor)	Date of receipt of deliverables	Comments on the deliverables
		<i>Appendix B - Strategy Template.ppt (2 pages)</i> <i>Appendix B - Workload Charts.ppt (32 pages)</i> <i>Appendix C - Multilingual Workload Survey (26 pages)</i> <i>Appendix C - Strategy Methodology (8 pages)</i> <i>B&P Exhibit No. 1.xls (2 pages)</i> <i>B&P Exhibits 2 thru 7.ppt (6 pages)</i> <i>Budget and Planning March Deliverable (10 pages)</i> <i>Information Management March Deliverable (181 pages)</i> <i>Organization Management March Deliverable (8 pages)</i> <i>Personnel Management March Deliverable (24 pages)</i>		

Contract No. 4500031016 signed on 19/04/2006 (No. 6)

Expected deliverables	Contracted date of delivery	Deliverables received (file names communicated to the External Auditor)	Date of receipt of deliverables	Comments on the deliverables
<p><i>Undertake the remaining tasks under the attached contract 4500028835. The work on portfolio investment will include with the analysis of strategic objectives by staff level, MLA and unit.</i></p>	<p align="center">31/07/2006</p>	<p><i>Leadership Team Meetings April 2006</i></p>		<p>As with the contracts above, there is no record of the date of receipt (email received, dispatch note, etc.), even when such a date had been identified.</p>
		<p><i>STRATEGY SESSION III.ppt (page 33)</i></p>	<p align="center">20/04/2006</p>	
		<p><i>Leadership Team Meetings June 2006</i></p>		
		<p><i>Reform Retreat 19 June.ppt (41 pages)</i></p>	<p align="center">19/06/2006</p>	
		<p><i>Reform Retreat 20 June - Essential Staffing.ppt (15 pages)</i></p>		
		<p><i>Reform Retreat 20 June.ppt (16 pages)</i></p>	<p align="center">20/06/2006</p>	
		<p><i>Position Description Development</i></p>		
		<p><i>Position Description - HQ FMO (3 pages)</i></p>	<p align="center">20/06/2006</p>	
		<p><i>Position Description-D2 Educ Program (3 pages)</i></p>	<p align="center">No date identified</p>	
		<p><i>Position Description-ED Sector HR Chief HQ (3 pages)</i></p>	<p align="center">No date identified</p>	
		<p><i>Position Description-HQ P3 Extrabudgetary Fund Raising (3 pages)</i></p>	<p align="center">No date identified</p>	
		<p><i>Position Description-HQ P5 Program Cycle Management (3 pages)</i></p>	<p align="center">No date identified</p>	
		<p><i>Position Description-Knowledge Mgmt Section EO (3 pages)</i></p>	<p align="center">No date identified</p>	
		<p><i>Position Description-P4 Country Planning (2 pages)</i></p>	<p align="center">No date identified</p>	
<p><i>Position Description-Sr Staff Professional HQ ADG (3 pages)</i></p>	<p align="center">No date identified</p>			
<p><i>Final Report</i></p>	<p align="center">No date identified</p>			
<p><i>(I) 1 Overview and Methodology (7 pages)</i></p>	<p align="center">No date identified</p>			
<p><i>(I) 2 Overview of Reform Process jst.ppt (8 pages)</i></p>	<p align="center">No date identified</p>			
<p><i>(I) 3 Change Model.ppt (4 pages)</i></p>				

Contract No. 4500031016 signed on 19/04/2006 (No. 6)				
Expected deliverables	Contracted date of delivery	Deliverables received (file names communicated to the External Auditor)	Date of receipt of deliverables	Comments on the deliverables
		(II) 4 Intro to Strategic Direction (2 pages)	No date identified	
		(II) 5 Strategic Direction (4 pages)	9/06/2006	
		(III) 6 Accountable Decentralization (20 pages)	9/06/2006	
		(IV) 7 Organizational Structure and Alignment (10 pages)	No date identified	
		(IV) 8 Organizational Structure.ppt (4 pages)	No date identified	
		(IX) 20 Summary of Recommendations (4 pages)	No date identified	
		(V) 9 Budget Resources (18 pages)		
		(V) 10 Unified Budget (2 pages)		
		(VI) 11 Planning and IM (10 pages)	No date identified	
		(VI) 12 Cover for Planning Attachment (1 page)	9/06/2006	
		(VI) 13 Planning Attachment.ppt (9 pages)	9/06/2006	
		(VII) 14 Knowledge Management (9 pages)	No date identified	
		(VIII) 15 Essential Staffing (19 pages)	No date identified	
		(VIII) 16 Revised Staffing Table Implementation Recommendations.xls (1 page)	No date identified	
		(VIII) 16 Staffing Table Implementation Recommendations.xls (1 page)	No date identified	
		(VIII) 19 Staff Moving out of Headquarters (1 page)	No date identified	
		(VIII) ED HQ Chart (Reform1).xls (8 pages)	No date identified	
		(VIII) ED HQ Chart _(16.05.2006_).xls (2 pages)	No date identified	
			No date identified	

Contract No. 4500031016 signed on 19/04/2006 (No. 6)				
Expected deliverables	Contracted date of delivery	Deliverables received (file names communicated to the External Auditor)	Date of receipt of deliverables	Comments on the deliverables
			No date identified No date identified 16/05/2006	
<i>Develop a reform implementation model to be ready to be submitted for discussion in the meeting with the leadership team scheduled for 19-20 April and 19-20 June 2006.</i>	31/07/2006		No record (email received, dispatch note, etc.) attesting to receipt.	
<i>Facilitate the work sessions with the leadership team scheduled for 19-20 June 2006 in Paris.</i>	31/07/2006		No record (email received, dispatch note, etc.) attesting to receipt.	
<i>Conduct an extensive review of regional office staffing and assistance in the review of specific personnel decisions related to staffing the new organizational structure and submit the report by 31 July 2006.</i>	31/07/2006		No record (email received, dispatch note, etc.) attesting to receipt.	

ANNEX 3
DETAILED TABLE ON THE STATUS OF THE REGULAR BUDGET
FOR THE EDUCATION SECTOR, BY MAIN LINE OF ACTION
FROM 1 JANUARY 2004 TO 31 DECEMBER 2005 (IN US \$000)

PROGRAMMES AND PROGRAMME RELATED SERVICES	Appropriations for the work plans	Expenditure (delivered/ unliquidated)	Expenditure (delivered/ unliquidated)	Implementation rate
I EDUCATION				
I.1 Basic education for all	37,103	37,275	(172)	100.5%
I.1.1 Basic education for all: targeting key goals	22,495	22,487	7	100.0%
1 Making the right to education a reality for all children	5,496	5,245	251	95.4%
2 Ensuring gender equality in EFA	3,298	3,209	90	97.3%
3 Promoting lifelong learning through literacy and non-formal education	6,284	6,050	234	96.3%
4 Improving the quality of education	5,989	6,623	(635)	110.6%
5 Focusing on education and HIV/AIDS	1,428	1,361	67	95.3%
I.1.2 Supporting EFA strategies	14,608	14,788	(180)	101.2%
1 Planning for the implementation of EFA	10,562	10,870	(308)	102.9%
2 Sustaining political and financial commitment	3,484	3,428	56	98.4%
3 Monitoring progress and evaluating EFA strategies	562	489	73	87.1%
Total, I.1				
I.2 Building learning societies	7,204	6,837	368	94.9%
I.2.1 Beyond universal primary education				
1 Renewing secondary education	591	571	19	96.7%
2 Promoting education and capacity-building in science and technology	596	563	33	94.5%
3 Reforming technical and vocational education and training	910	888	23	97.5%
4 Promoting diversity and cooperation in higher education	1,161	1,127	34	97.1%
5 Supporting teachers and educational personnel	1,560	1,467	93	94.1%
Total, I.2.1	4,819	4,617	202	95.8%
I.2.2 Education and globalization				
1 Responding to opportunities and challenges	554	505	49	91.2%
2 Global networks supporting EFA, human rights education and education for a culture of peace	1,832	1,715	117	93.6%
Total, I.2.2	2,386	2,220	166	93.0%
UNESCO education institutes				
UNESCO International Bureau of Education (IBE)	4,591	4,591	-	100.0%
UNESCO International Institute for Educational Planning (IIEP)	5,100	5,100	-	100.0%
UNESCO Institute for Education (UIE)	1,900	2,090	(190)	110.0%
UNESCO Institute for Information Technologies in Education (IITE)	1,100	1,100	-	100.0%
UNESCO International Institute for Capacity-Building in Africa (IICBA)	2,000	2,000	-	100.0%
UNESCO International Institute for Higher Education in Latin America and the Caribbean (IESALC)	2,200	2,200	-	100.0%
Total, UNESCO education institutes	16,891	17,081	(190)	101.1%
Projects relating to cross-cutting themes				
o Eradication of poverty, especially extreme poverty	836	776	60	92.8%
o The contribution of information and communication technologies to the development of education, science and culture and the construction of a knowledge society	1,140	1,134	6	99.5%
Total, Projects relating to cross-cutting themes	1,976	1,910	66	96.7%
	1,125	1,188	(63)	105.6%
Staff costs	49,303	48,733	570	98.8%
TOTAL, MAJOR PROGRAMME I	64,300	64,291	9	100.0%

ANNEX 4

EXTRACT FROM THE STANDARDS OF CONDUCT FOR THE INTERNATIONAL CIVIL SERVICE

Standards of conduct for the international civil service, common to international civil servants of the United Nations and related agencies, were adopted by the United Nations General Assembly in resolution 56/244 in 2001. A booklet setting out the content of the Standards of Conduct is issued to every person appointed at UNESCO (*Report on Standards of Conduct in the International Civil Service*) when taking up duties. It is mentioned in Item 2105 of the UNESCO Administrative Manual.

The main provisions of relevance are listed below.

The fundamental values of international civil servants are competence, integrity, impartiality, independence and discretion (Article 2). Civil servants will place the interests of their organization above their own and use its resources in a responsible manner (Article 4). Honesty, truthfulness, impartiality and incorruptibility are to be placed on the same level as competence and efficiency (Article 5). International civil servants must remain independent of any authority outside their organization (Article 8).

It is the responsibility of managers to ensure a harmonious workplace based on mutual respect (Article 15). Managers must be seen as role models and they have therefore a special obligation to uphold the highest standards of conduct. They must act impartially, without intimidation and favouritism (Article 16).

Managers must communicate effectively with their staff and share information with them. International civil servants have a reciprocal responsibility to provide all pertinent facts and information to their supervisors (Article 17).

It is the duty of international civil servants to report any breach of the organization's rules and regulations to a higher level official, whose responsibility it is to take appropriate action. An international civil servant who makes such a report must be protected against reprisals or sanctions (Article 19). International civil servants must not engage in any form of harassment and must be above any suspicion of it (Article 20).

Questions of conflict of interest need to be treated with care. Conflict of interest includes circumstances in which international civil servants, directly or indirectly, would appear to benefit improperly, or allow a third party to benefit improperly, from their association in the management or the holding of a financial interest in an enterprise that engages in any business or transaction with the civil servants' organization (Article 21).

There can be no question but that international civil servants should avoid assisting private persons in their dealings with their organization where this might lead to actual or perceived preferential treatment. This is particularly important in procurement matters. They should perform their official duties and conduct their private affairs in a manner that preserves and enhances public confidence in their own integrity and that of their organization (Article 22).

The privileges and immunities that international civil servants enjoy are conferred upon them solely in the interests of the organizations. They do not exempt international civil servants from observing local laws. Only the executive head is competent to waive the immunity accorded to international civil servants or to determine its scope (Article 39). Organizations may be called upon to exercise judgement in the light of the nature and circumstances of individual cases. Acts that are generally recognized as offences by national criminal laws will normally also be violations of the standards of conduct for the international civil service (Article 40).

It is improper for international civil servants to engage, without prior authorization, in any outside activity, whether remunerated or not (Article 41). To protect the international civil service from any appearance of impropriety, international civil servants must not accept, without authorization from the executive head, any honour, decoration, gift, remuneration, favour or economic benefit of more than nominal value from any source external to their organizations (Article 46). To conclude, international civil servants must take a positive and active approach in upholding the values set out in the standards of conduct (Article 48).



United Nations
Educational, Scientific and
Cultural Organization

Executive Board

Hundred and seventy-sixth session

176 EX/INF.12
PARIS, 16 March 2007
Original: English/French

Item 39 of the provisional agenda

REPORT BY THE EXTERNAL AUDITOR ON THE PROCEDURES USED TO HIRE CONSULTANTS FOR THE RESTRUCTURING OF THE EDUCATION SECTOR

COMMENTS BY THE DIRECTOR-GENERAL

SUMMARY

This document presents the comments by the Director-General on the report by the External Auditor on the procedures used to hire consultants for the restructuring of the Education Sector.

I. GENERAL COMMENTS

1. The Director-General acknowledges with appreciation the work done by the External Auditor in preparing his report on “the procedures used to hire consultants for the restructuring of the Education Sector”, as requested by the Executive Board in 175 EX/Decision 5. The Director-General supports the decision taken by the External Auditor to present his report to the 176th session of the Executive Board, instead of waiting until the 177th session as allowed for under 175 EX/Decision 5. This has given the opportunity to the Secretariat to address immediately the recommendations raised by the External Auditor in his report.
2. The Director-General concurs with the External Auditor’s findings that the Secretariat did not fully adhere to the procedures in place in the contracting of consultants for the restructuring of the Education Sector. The Director-General is committed to providing an efficient and transparent management of the Organization’s financial resources, including in the procurement process.
3. The External Auditor’s recommendations are fully accepted and the Director-General is already taking steps to implement them and to ensure that in the future the Secretariat operates within clear and appropriate procurement rules and procedures.

II. RECOMMENDATIONS

Audit recommendation 1

4. ***The independence of Administrative Officers (AO) must be strengthened*** by reclassifying their posts in terms of grade, thus providing a genuine counterweight to the power of those ordering expenditure, by reasserting the supervisory link to the Division of the Comptroller, and by reaffirming the role vested in that Division and in the Comptroller in regard to the internal financial control system and in the implementation of Article 10.1(d) of the Financial Regulations.¹ The person responsible for internal financial control (AO) is not always in a position to enforce compliance with the Organization’s regulations. It should be noted that the *de facto* subordination of the AO to the head of sector (ADG/ED, in this instance) is a weak point in the internal control mechanism. One of the requirements of internal control is strict separation between purchaser and payer. In practice, the position of Administrative Officer does not guarantee such independence.

Comments by the Director-General

5. It is clear that Administrative Officers perform the difficult multiple roles of being custodians of the Financial Rules within their areas as well as providing administrative support to their immediate supervisors and carrying out other functions. Given that this could create tension and at times difficulties in resolving contentious issues, strengthening the relative independence of the Administrative Officers via a clearly defined reporting relationship with the Comptroller on financial matters would be helpful. The recommendation to reinforce the independence of the Administrative Officers is noted and appropriate action is being taken.
6. In accordance with Financial Rule 5.4, the Comptroller has delegated his responsibility to “examine and approve obligations within limits approved” to certifying officers, who are generally members of the administrative units at and away from Headquarters. One option which the Secretariat will explore is that, in line with the job description of the newly created Director of Office of Financial Services in the Education Sector, all Administrative Officers could have a function-based reporting line to the Office of the Comptroller with clear performance objectives. A

¹ “The Director-General shall (...) (d) maintain an internal financial control and internal audit which shall provide for an effective current examination and/or review of financial transactions in order to ensure: (i) The regularity of the receipt, custody and disposal of all funds (...) (ii) The conformity of obligations and expenditures with the appropriations (...) voted by the General Conference or with the purposes and rules relating to Trust Funds (...) (iii) The economic use of the resources of the Organization.”

monitoring mechanism, perhaps through *post facto* reviews undertaken, could assist the Comptroller in ensuring compliance and accountability.

Audit recommendation 2

7. **A reminder must be issued in respect of the rules and regulations on waivers:** *It is suggested that the legal grounds for granting waivers should be restated and be made more precise in the Manual, if necessary:*

- *first, recalling the decision-making role of the Contracts Committee, a collegial body representing the various units, in respect to requests for waivers, or at least clarifying the potential ambiguity arising from the discrepancy in the wording of Items 1025 and 330 (326) of the Manual;*
- *recalling that the Financial Regulations have conferred upon the Director-General the right to depart from the rules of advertising and competitive bidding, that the Director-General, in pursuance of the Financial Regulations, has established rules regulating the conditions for granting such waivers and that no departure may be permitted from those rules, other than to amend the framework for the future;*
- *and, lastly, reaffirming that the only possible cases in which waivers may be granted are those covered by Item 1025.13. Any revision of the list should not result in the establishment of an over-general category such as “when the interest of the Organization so requires”.*

8. *The practice of giving the ADG/ADM the role of arbiter in granting waivers is based on a generous interpretation of the threshold of intervention of the Contracts Committee in approving contracts or making a recommendation, and of Item 326.27, which provides that disagreement between the Contracts Committee and the contracting unit as to the beneficiary of the contract is to be settled by the Assistant Director-General for Administration. The rules concerning waivers do not explicitly provide for arbitration by ADG/ADM. Consideration may be given in this particular regard to requiring that the Contracts Committee reach a unanimous decision or, failing such unanimity, that, on the basis of minutes of the Committee setting out the divergent opinions, the matter be referred to the Director-General to decide in fine and in person on any departure from the application of the rules essential to the smooth running of the Organization, on condition that the Manual so provides.*

Comments by the Director-General

9. The Director-General has always instructed his staff to adhere strictly to provisions of the Administrative Manual. The grounds for waivers (i.e. derogations) should be as set out in the Manual and should only occur in very limited, exceptional circumstances, justified by the best interests of the Organization. Upon receipt of the External Auditor’s draft report for comment, the Director-General immediately launched a review of the relevant procurement rules and procedures. This includes clarifying some of the provisions of Items 1025 and 326 of the Administrative Manual, to ensure closer conformity with the Financial Regulations approved by the General Conference, notably Financial Regulation 10.5 which states that “tenders for equipment, supplies and other requirements shall be invited by advertisement, except where the Director-General deems that, in the interests of the Organization, a departure from the rule is desirable.”

10. In conformity with the recommendation of the External Auditor:

- The Director-General has initiated the revision of Manual Items 1025 (Procurement of goods) and 326 (Contracts Committee) which provide the mechanism governing procurement procedures, including the establishment of a contracts committee and a system under which waivers could be granted.

- Item 1025 of the Administrative Manual is being amended to highlight the general rule that procurement should be governed by the principles of economy, effectiveness, competition and transparency.
- The Contracts Committee's delegated authority will be clarified and reinforced to ensure appropriate compliance. Steps are already being taken to improve due diligence procedures.
- The revised Manual will reaffirm that the only cases in which waivers may be granted are those exceptional circumstances set out in Item 1025. The list of the grounds for waivers will be consistent with best practices existing within the United Nations system.

Audit recommendation 3

11. ***The lack of separation between the roles of the officer who identifies the need for procurement, the officer who organizes procurement and the officer who accepts deliverables must be resolved.*** *In the case of the procurement of intellectual services, for instance, as the procedure stands at present, the same person may identify the need for procurement, choose the vendor, draw up the contract without respecting standard contractual provisions, accept and validate the deliverables, and authorize payments to the vendor. Others should be involved in the procedure: the Procurement Service should be able to organize procurement procedures.*

Comments by the Director-General

12. The Secretariat reviewed the existing procedures to address the concern over the perceived confusion of roles between the staff who identify the need for procurement, the one who organizes procurement, and the one who accepts deliverables. There are currently three distinct and separate financial roles for each procurement action as explained in the Tables of Delegated Authority and Accountability (Administrative Manual Appendices 3A and 10B):

- Approving officer (ADG or delegated officer) authorized by the Director-General to commit funds vis-à-vis parties by concluding contracts;
- Certifying officer (Administrative Officer) designated by the Comptroller to examine contracts and related obligations, ensuring conformity to Financial Rules and Regulations;
- Paying officer (ADM/DCO) with the responsibility to disburse funds after examination of the payment request.

13. A fourth separate role to receive goods and services is not necessary. The approving officer is best placed to have the necessary competence to evaluate the quality of services rendered in terms of logic of procurement. However, the Director-General will be more vigilant in order to ensure continuous improvement in the transparency and accountability of the Secretariat.

14. The Delegation and Accountability Committee (DAC) will actively monitor the implementation and observance of the Tables of Delegated Authority and Accountability relating to procurement of goods and services, which established the specific lines of authority and accountability for appropriate delegation of authority, as well as the service standards (indicators of performance) ultimately used to assess the performance in managing those key processes.

Audit recommendation 4

15. ***All officials must have better knowledge of the rules of the Administrative Manual.*** *Compulsory training on the content of the Administrative Manual, which should also include the ethical dimension of compliance with the rules, should be organized for new arrivals and also for*

officers who, by the nature of their duties, incur high levels of expenditure. Everyone must be familiar with the rules of the Manual. They protect the Organization and provide officers with a framework to guide their action in a manner consistent with the interests of the Organization.

Comments by the Director-General

16. The Director-General attaches great importance to the critical need to improve due diligence within the Secretariat and for relevant training for those involved at all steps of the procurement process. ADM/DCO, with the endorsement of the Delegation and Accountability Committee (DAC), has taken the lead in preparing a comprehensive training plan aimed at strengthening financial management of contracts at Headquarters. This initiative, which will apply to all levels of the Organization, will continue and form part of additional procurement training. In addition, orientation courses on procurement procedures will be given to senior management staff upon their entry into UNESCO. The Director-General has also launched a process to modernize, simplify and improve the Manual.

17. As announced in his address to the staff on 12 December 2006, the Director-General has recently disseminated the Standards of Conduct for the International Civil Service to all staff, both at and away from Headquarters. In his message accompanying the document, he stressed that the Standards of Conduct “are a key to the culture of accountability and transparency that we want to promote in UNESCO”.

18. In fact, UNESCO has been following closely the initiative taken by the United Nations Secretary-General in launching an Ethics Office, reporting directly to him, with a view to strengthening ethical conduct within the United Nations. Along the same lines, the Director-General intends to launch the development of an Ethics Office and programme that would promote a global ethical environment in the Organization. The main responsibilities of the Ethics Office will include the following activities: promotion of the code of conduct, administration of a voluntary disclosure channel to allow staff and other parties to report suspected misconduct, whistleblower protection (Protected Disclosure Policy), administration of the Organization’s financial disclosure programme for senior staff and those staff who perform sensitive functions such as procurement, and developing standards, training and education on ethics issues, in coordination with the Bureau of Human Resources Management (HRM). As this activity was not included in document 33 C/5, the Director-General has made an appeal for extrabudgetary resources to cover the cost of the ethics programme, which is estimated at approximately US \$675,000 per biennium. An appropriate provision has been included in the core budget scenario (i.e. Zero Real Growth of US \$648 million) for document 34 C/5.

19. Following the External Auditor’s recommendation, ethical considerations within procurement procedures are being reviewed and will be addressed in a more comprehensive and elaborate manner within the Manual. The revised provisions will continue to require all UNESCO procurement personnel to maintain an unimpeachable standard of integrity in all their business relationships both inside and outside the Organization in line with the United Nations Standards of Conduct as well as UNESCO’s own goals and values. Beyond these considerations, the new Manual provisions will also require that all UNESCO entities observe the highest standard of ethics throughout the procurement process, and examples of unethical behaviour will be provided.

20. The Director-General believes that the procurement process must allow potential contractors to compete for UNESCO business on a fair, equal and transparent basis. Staff members associated with the procurement function are therefore responsible for protecting the integrity of the procurement process and maintaining fairness in UNESCO’s treatment of all potential contractors. The standards of conduct for all staff involved in procurement to safeguard against conflicts of interest which may compromise the integrity and objectivity of UNESCO will be further developed in the revised provisions of the Manual and will include the requirement that during the pre-solicitation phase, staff must not allow potential contractor(s) access to information, whether technical, financial or any other nature, on a particular acquisition before such information is

available to the business community at large. Further, staff may not use restrictive specifications, statements of work or terms of reference that may discourage competition.

Audit recommendation 5

21. The Organization's system of disciplinary measures must be clarified and supplemented. *At present, any staff member may be held financially responsible under Staff Rule 101.2, which states that "any staff member,² who, by malice or culpable negligence, or by failure to observe any regulation, rule or administrative procedure of the Organization, involves the Organization in unnecessary liability, expense or loss, shall be held responsible, and may be required to pay compensation therefor". It should not be possible to validate a posteriori acts committed with the intention of circumventing the rules of UNESCO. To ensure effective compliance with the rules, it is considered that there must be provisions for sanctions in the event of breach and mechanisms for ruling on such sanctions. The steps taken by the Director-General to disseminate the United Nations Standard of Conduct to all staff members are duly noted.*

Comments by the Director-General

22. The Director-General agrees that all staff members are responsible for the regularity of actions taken by them in the course of their official duties. Any staff member who takes action contrary to the UNESCO Financial Rules and Regulations or the procurement rules may be held personally responsible and financially liable for the consequences of such action. It is for the Director-General to decide what disciplinary measures, if any, to impose on staff members, in accordance with the applicable rules and procedures, it being understood that such disciplinary measures would be subject to review by the appeals bodies, i.e. the UNESCO Appeals Board and the Administrative Tribunal of the International Labour Organization.

23. Following the introduction of an ethics programme in UNESCO, the Director-General will establish administrative measures which will clarify the application of the provisions of the Staff Regulations and Staff Rules. This is not restricted to the specific subject of non-application of procurement rules but rather concerns the Standards of Conduct of the International Civil Service, which cover a wider range of ethical issues.

Audit recommendation 6

24. Mechanisms must be established to monitor contracts above the \$100,000 threshold and to monitor compliance with contract procedures. *Until October 2005, a Quality Control Unit established by the Financial Control and Services Section within the Division of the Comptroller (ADM/DCO/FCS) checked FABS periodically to identify contracts that exceeded the threshold. The Unit detected very early, in August 2005, contracts that exceeded the threshold for one vendor and alerted the Chairperson of the Contracts Committee. Owing to understaffing, the Unit has not been operational since October 2005. In other words, one of the only contract award control mechanisms is now inoperative owing to a lack of resources.*

Comments by the Director-General

25. The Director-General endorses the recommendation for more stringent internal control mechanisms. Over the past seven years, the main challenge has been to ensure adequate resources for support services in the framework of the Organization's budget given the competing demands and reductions in the purchasing power imposed by successive Zero Nominal Growth budgets.

26. Further to the implementation of FABS in 2002, DCO functions and structures were reviewed in early 2004. To meet organizational needs for independent expenditure control and to strengthen internal controls, a Quality Control Unit was set up within DCO/FCS. Two professional posts,

² Staff Rule 204.11 bis and Item 2440.

earmarked for this Unit, have since been allocated to Accounts Payable due to the immediate need to assure third-party payments are processed in priority. A third professional post set up in document 32 C/5 was abolished in document 33 C/5, while six other requested posts were never approved due to the severe budgetary constraints imposed by a Zero Nominal Growth budget. This lack of resources has now been recognized by senior management and the abolished post is being reinstated in document 34 C/5.

III. CONCLUSION

27. Looking ahead, the Director-General is confident that the changes put in place (such as the clarification of the Manual items and their relation to the Financial Regulations, and appropriate training) will enable the Secretariat to function within clear and well-known procurement rules, and will lead to a better understanding of and strict adherence to such rules by the Secretariat, in order to prevent reoccurrence of the failures identified in the audit report.

28. Having accepted and acted upon the recommendations of the audit report, the Director-General looks forward to the Organization concentrating its efforts on maintaining momentum on Education For All (EFA) and consolidating its position as the lead agency for EFA.