

# WIPO



A/41/13

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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

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## **ASSEMBLIES OF THE MEMBER STATES OF WIPO**

### **Forty-First Series of Meetings Geneva, September 26 to October 5, 2005**

**AUDIT BY THE EXTERNAL AUDITOR OF THE DETAILED CONSTRUCTION  
ACCOUNTS RELATING TO THE RENOVATION, MODERNIZATION AND  
EXTENSION OF THE FORMER WORLD METEOROLOGICAL ORGANIZATION  
(WMO) BUILDING**

*Document prepared by the Secretariat*

1. Article 11(10) of the Convention Establishing the World Intellectual Property Organization (WIPO) provides that the auditing of the accounts is to be effected by one or more Member States, or by external auditors, as provided in the financial regulations, and that they shall be designated, with their agreement by the WIPO General Assembly. Similar powers are conferred on the Assemblies of the Paris, Berne, Madrid, Hague, Nice, Lisbon, Locarno, the International Patent Classification (IPC), the Patent Cooperation Treaty (PCT) and Vienna Unions.
2. In line with the above, the designated external auditors provided the General Assembly of WIPO, as well as Unions administered by WIPO with Audit Reports, on a regular basis, or as requested, on the accounts of WIPO, of the Unions administered by WIPO and of the accounts of technical assistance projects executed by WIPO.
3. On April 20, 2005, the Secretariat received from the External Auditor a report entitled "Audit of the detailed construction accounts relating to the renovation, modernization and extension of the former World Meteorological Organization (WMO) building".

4. The said report is annexed to this document.

5. The original report was made available to all WIPO Member States by Note C. N 2522/WIPO-11 of April 25, 2005, as well as at the eighth session of the Program and Budget Committee, which took place from April 27 to 29, 2005, at WIPO headquarters.

*6. The Assemblies of the Member States of WIPO and the Unions administered by WIPO are invited to note the contents in this document and the annex thereto, and comment accordingly.*

[Annex follows]

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ANNEX

EIDGENÖSSISCHE FINANZKONTROLLE  
CONTRÔLE FÉDÉRAL DES FINANCES  
CONTROLLO FEDERALE DELLE FINANZE  
SWISS FEDERAL AUDIT OFFICE



**WORLD INTELLECTUAL PROPERTY ORGANIZATION  
GENEVA**

**AUDIT  
of the detailed construction accounts relating to the  
renovation, modernization and extension of the former  
World Meteorological Organization (WMO) building**

**Report to the General Assembly  
by the external auditor**

*Reg. No.: 1.4242.944.00330.03  
reda/pfju/zupe/nede  
Bern, November 1, 2004*

## **GENERAL**

### **Mandate**

1. At the thirty-ninth series of meetings held in Geneva from September 22 to October 1, 2003, the General Assembly of the World Intellectual Property Organization (WIPO) and the Assemblies of the Paris, Berne, Madrid, Hague, Nice, Lisbon, Locarno, IPC, PCT and Vienna Unions renewed the mandate of the Swiss Government as auditor of the accounts of WIPO and the Unions administered by WIPO, and also the accounts for technical assistance projects conducted by the Organization up to and including 2007 (paragraph 196 of document A/39/15).

2. The Government of the Swiss Confederation entrusted me, as Director of the Swiss Federal Audit Office, with the auditing of the accounts of WIPO and of the Unions mentioned above. I entrusted a number of qualified colleagues from the Federal Audit Office to carry out, at the headquarters of the International Bureau in Geneva, an audit of the detailed construction accounts relating to the renovation, organization and extension of the former World Meteorological Organization (WMO) building. That audit was conducted from May 10 to June 10, 2004.

3. My mandate is specified in Article 6.2 of the WIPO Financial Regulations and defined by the terms of reference for audit which are annexed to those Regulations.

### **Subject of the audit**

4. The procedures for the acquisition of the building and for the award of the conversion work on the former WMO building were examined in the course of the interim audits of the accounts for the 2000-2001 biennium. This final review of the detailed construction accounts for that building related to the following:

- organization of the project
- monitoring of project costs
- overall project management
- accounts and financial management of the project

## **Information and documents**

5. I wish to express thanks for the kindness with which information and documents were passed on by the WIPO officials approached. In the course of the auditing work, my colleagues had regular discussions with Mr. Petit, Deputy Director General and Chairman of the Contracts Review and Constructions Committee, Mr. Favatier, Director of the Finance Division, Mr. Müller, Controller, Mr. Estoppey of the Procurement and Contracts Service, Mr. Tagnani, Director of the Buildings Division and his immediate colleagues, Messrs. Gacic, Stetieh and Sambuc.

6. Pursuant to item 9 of the additional mandate for the external auditing of the accounts, the Director General conveyed his comments to me in a letter dated March 30, 2005 and they have been duly incorporated in this report.

## **INSPECTIONS AND FINDINGS**

### **General**

7. In 1992, the WIPO Director General at the time was authorized by the Coordination Committee to go ahead with negotiations for the purchase of the World Meteorological Organization (WMO) building. A memorandum of May 23, 1993 contains the terms of the transaction approved by the governing bodies of WIPO at the 24<sup>th</sup> series of meetings, held in Geneva from September 20 to 29, 1993, representing an amount of 34.3 million francs. WIPO thus acquired the leasehold rights and the buildings and other installations erected on Plot No. 4182 in Petit-Saconnex. The plot offered a certain number of advantages in as much as it was located in the same parcel of land as the plots housing the WIPO and BIRPI I and II buildings. The purchase was 100% financed by the WIPO Special Reserve Fund.

### **Organization of the project**

8. The preliminary studies on the renovation, modernization and extension of the former WMO building started at the end of 1997. The administrative management of the project was entrusted to three different teams which followed each other within the WIPO Secretariat. The representatives of those teams came mainly from the Buildings Division and the Procurement and Contracts Service, and the Controller should also be added to their number. The Finance Division was responsible for incurring expenditure in accordance with the WIPO Financial Regulations. From 2000 onwards Mr. Tagnani, Director of the Buildings Division, was responsible for the project. He was accompanied by Mr. Gacic, the Assistant to the Director of the Buildings Division and, from 2003 onwards, by Mr. Stetieh as far as financial aspects were concerned.

9. On November 13, 2000, the date on which the contract was signed with the general contractor, the Director of the Buildings Division was appointed to take charge of the management of the work within the meaning of Article 33 of Standard 118 of the Swiss Society of Engineers and Architects (SIA). That management, which “*represents the client in his relations with the contractor*”<sup>1</sup> is mainly responsible for “*supervising the accounts and checking the work*”<sup>2</sup> and for “*taking delivery of*” it.<sup>3</sup> The general contractor was responsible for managing the operation of the work done. The architectural management was entrusted to a pool of representatives.

10. The many changes to the project management structure, in terms of both those responsible within WIPO and the different successive teams of representatives, complicated the gathering of the requisite documentation for this audit. It was not possible to have a full and consistent picture of the implementation of the project from its outset until after information had been collected from the many persons consulted in the various divisions of WIPO and then thoroughly analyzed and collated. The result of the study is presented in diagrammatic form in the table appearing in Annex 1 to this report (evaluation of the general estimate, budget and awards).

**Recommendation No. 1:** When making changes to the management of a project, ensure that information and data are passed on to those to whom responsibility is transferred. The documentation relating to the project should be recorded more efficiently in order that it may be readily and rapidly available, in particular to the project management. Finally, the definition of the tasks to be accomplished should be properly recorded, and coordination between the various divisions of WIPO should be improved.

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<sup>1</sup> SIA Standard 118, article 33, paragraph 2

<sup>2</sup> SIA Standard 118, article 34, paragraph 1

<sup>3</sup> SIA Standard 102, article 4.4.4

## **Project cost control**

### Preliminary estimates (late 1997) and Budget approved by the General Assembly in March 1998 (30.4 million francs)<sup>4</sup>

11. The table in Annex 1 shows the development of the general estimate for the project, its budget and the awards under it. Comments on that development are to be found in the paragraphs below.

12. Document WO/GA/22/1 of February 19, 1998, which was submitted to the General Assembly of WIPO at the 22<sup>nd</sup> session, held from March 25 to 27, 1998, states in paragraphs 34 and 52 that the total cost of the renovation, conversion and extension of the former WMO building would be about 30.4 million francs, an amount supposedly based on “*a preliminary study by WIPO’s consultant architect*”.

13. Document A/35/11 of September 22, 2000, which was submitted to the 35<sup>th</sup> series of meetings of the Assemblies of the Member States of WIPO, also states in paragraph 23 that “*the initial project budget of thirty million four hundred thousand Swiss francs (...) had been prepared on the basis of a preliminary study of requirements prepared in late 1997/early 1998*”. After analyzing various documents, my colleagues found that the preliminary study in question, which should have been carried out by the consultant architect (according to document WO/GA/22/1), had actually been carried out by WIPO.

14. On December 16, 1997, the Buildings Division made a first cost estimate, corresponding to “*the refurbishment of the existing building*” for 17 million francs, “*the addition of a floor to the existing building*” for eight million francs and “*the construction of a new building opposite the existing tower*” for seven million francs. The maximum amount thus estimated of 32 million francs “*could be further reduced by 10 to 20% if all the work were carried out at the same time*”.

15. A second cost estimate, confirmed by the Buildings Division on January 12, 1998, served as the basis for the information contained in the report of February 19, 1998, concerning the total project cost of 30.4 million francs, and also for the budget approved by the General Assembly in March 1998 (document WO/GA/22/1). The cost of the refurbishment of the building dropped by 0.6 million francs, that of the additional floor by half (-3.8 million francs), and an additional 80-space car park was incorporated in the project for the sum of 2.8 million francs. Apart from the information on costs, the characteristics and specific features of the estimated project which determined those costs were not documented.

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<sup>4</sup> See table in Annex No. 1

16. Following their inspections, my colleagues considered that the cost estimates made by the Buildings Division for the project were inadequate as a reliable basis for the adoption of a budget by the General Assembly. They do not conform to established practice in the sector.

17. These findings highlight the problems associated with a request to approve a budget submitted to the General Assembly by the WIPO Secretariat, where the budget in question is not based on documented cost estimates. Moreover, it is not possible to determine what was genuinely included in the amounts specified, and in particular whether the figures included the representatives' fees. According to the dictates of SIA Standard 102, the services relating to the preliminary study of a project, which *inter alia* allow a "range of costs" to be estimated, are based on a feasibility study. Such a study has to use a methodological approach to determine the requirements of the client and his objectives, as well as a framework of conditions. There should have been some development of conceptual proposals and a calculation of volumes and areas when the cost estimate was made for the 30.4 million franc budget submitted to the General Assembly for approval in March 1998.

**Recommendation No. 2:** The budget for the construction of a building should be voted on by the General Assembly on the basis of a reliable cost estimate determined by the study of a preliminary project, including the production of specifications and a feasibility study. The required degree of accuracy should then be +/- 15%, as recommended by SIA Standard 102.

***WIPO comment:***

*The first WIPO estimates of an amount of 30.4 million francs, which were made at the beginning of 1998, were confirmed in the general estimate drawn up at the end of 1998, for an amount of 34.6 million francs, in other words within the range of 15%.*

General Estimate No. 1<sup>5</sup>  
*Late 1998/34.6 million francs*

18. In October 1998 WIPO commissioned a firm of architects in Geneva to draw up a preliminary project and a final project. The general estimate was submitted together with the final project file at the end of 1998.

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<sup>5</sup> See table in Annex 1

19. A general estimate was drawn up for the renovation, modernization and extension of the former WMO building for an amount of 30.4 million francs. A second estimate was also drawn up for the extension of the underground car park of the former WMO building, representing 4.2 million francs, i.e. a total of 34.6 million francs. The fees included in the estimate amounted to 5.2 million francs.

20. The WIPO Secretariat endeavored to compare the general estimate (34.6 million francs) drawn up by the consultant architect with its own estimates (30.4 million francs), and to justify the cost overrun. That exercise was of little interest, however, in as much as the Buildings Division project was not documented, as already mentioned.

General Estimate No.2<sup>6</sup>  
(late 1999/51.5 million francs)

21. In the course of the year 2000, the change of project management team at WIPO coincided with the appointment of a new firm of architects. Analysis of the contract shows that the services requested cover the initial phase of the project, namely the drawing up of a final project and a general estimate. The new representative appointed did not confine himself to the preparatory phase of implementation, representing services in addition to those already provided, but, at the request of the WIPO Secretariat, took over the conceptual work on the project. The general estimate for the new project shows an overall cost figure of 51.5 million francs, not including the fees of the representatives. There is no explanation or documentation supporting the justification for the new studies.

22. Paragraphs 1 and 7 of document A/35/11 refer to “*preliminary assessments*” that “underestimated [the initial budget] by twelve million two hundred thousand Swiss francs”. This significant difference could be justified by an increase in the volume of the building, if the exact data for the project corresponding to WIPO’s preliminary estimates were known.

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<sup>6</sup> See table in Annex 1

23. Comparison of the volumes and areas of the two projects worked out by the agents shows clearly that separate projects are involved. The changes in the prices by cubic meter bear out that observation (see table below). It is not possible to find any corresponding feature between the two projects, as they are manifestly different. All that can be done is to note that the increase in volume between the two projects, calculated at a price of 650 francs per cubic meter, corresponds to additional costs of about 10.5 million francs. That figure perhaps clarifies part of the 12.2 million-franc underestimate, taking into account also the facts mentioned in paragraph 22.

24. Paragraph 16 of document A/35/11 states that “*the total building space amounts to eighteen thousand six hundred and seventy square meters and would remain as initially approved*”. This statement is not correct, as the area increased by two thousand six hundred and twelve square meters, as shown in the table below:

Changes in volume, areas and costs between Project No. 1, Project No. 2 and the final accounting :

	Volume (m <sup>3</sup> )	Area (m <sup>2</sup> )	CHF/m <sup>3</sup> SIA <sup>7</sup>
Project No. 1	59,960	18,739	475.--
Project No. 2	75,759	21,351	650.-- <sup>8</sup>
Final accounting	75,759	21,351	800.-- <sup>9</sup>

25. By way of comparison, I will also mention the SIA prices per cubic meter (CFC 2) of 500 francs for the new World Meteorological Organization building (general estimate updated in 2004) and 800 francs for the UNHCR building in Geneva (general estimate updated in 2004). It should be noted that the latter is equipped with substantial glazed areas and four conference rooms with a range of 20 to 80 seats. The average for an administrative building of the type envisaged by WIPO is rather around 600 francs/m<sup>3</sup>. The price of 800 francs/m<sup>3</sup>, corresponding to the final accounting should therefore be regarded as high. This finding of a high price is also borne out by the price per cubic meter of 930 francs, in terms of all the CFCs together, or again by the price per workplace of 157,000 francs. It should also be pointed out that these price data take no account of the purchase of the building for 34.2 million francs, or of an additional invoice of 1.4 million francs (see paragraphs 40 to 51 below). In that case, a price of 1,400 francs/m<sup>3</sup> should be considered rather than 930 francs/m<sup>3</sup> and 235,000 francs instead of 157,000 francs respectively. My colleagues are of the opinion that the former WMO building does not correspond to today's market price, if its initial purchase and the cost of renovation, modernization and extension are taken into account.

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<sup>7</sup> As per construction costs code 2 (CFC 2)

<sup>8</sup> Fees not included

<sup>9</sup> Not including additional claim of 1.4 million francs

**WIPO comment:**

*Paragraph 25 above gives a cost/m<sup>3</sup> ratio for a number of buildings by way of comparison. It gives rise to the following comments:*

- *the cost per m<sup>3</sup> of 800 francs for the former WMO building includes the fees; it would be 650 francs/m<sup>3</sup> without the fees;*
- *renovation is more costly than a new construction;*
- *the Procter and Gamble building adjoining the former WMO building was sold at over 100 million francs, a price that bears comparison with the operation to renovate the former WMO building, whereas its workplace capacity is only 400, compared with 450 for the renovated former WMO building.*

Budget approved by the General Assembly in September 2000 (59 million francs)<sup>10</sup>

26. A number of alterations were made by WIPO to project No. 2, corresponding to the general estimate of 51.5 million francs. The alterations relate essentially to the design of the outer walls and the addition of lifts and escalators (which were not made). The general estimate was not updated accordingly.

27. Following the invitation to tender for the selection of a general contractor, it was agreed by the WIPO Secretariat that the amount of the tender selected would be reduced arbitrarily by six million francs, which would bring the cost down from 57 to 51 million francs. The agents were not included in these negotiations, and indeed they were opposed to the reductions. Two contracts were drawn up on that basis; a first one, for 8 million francs, representing a restricted number of services, was signed on August 22, 2000, before the September meeting of the General Assembly. Its purpose was to signal the start of the work to the Assembly. The main contract, for 51 million francs, which superseded the first, was signed on November 13, 2000. Eight months later, on July 27, 2001, the establishment of an additional contract for 5.8 million francs reinstated most of the work previously withdrawn. The balance of the work was also done as the work progressed on the site, but without any amendment to the contract. That work forms part of the claims of the general contractor that are still outstanding (see paragraphs 40 to 51 below).

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<sup>10</sup> See table in Annex I

28. The savings demanded by WIPO meant that it was no longer possible to produce an administrative building that conformed to building standards and above all fire safety standards, albeit mandatory. The building moreover no longer provided the standard of equipment that any client was entitled to expect from an administrative building; WIPO planned to do without the blinds on the outer walls of the building, floor channels and boxes, half of the inner partitions and some of the false ceilings, but also to eliminate a quantity of fireproofing material and emergency exit markings, a reduction in the quantity of concrete, pillars, electric cabling and paint. The mere fact of listing these savings shows, as the agent states in a report drawn up at WIPO's request, that "certain arbitrary decisions were taken in order to make savings and meet the budget imposed by the client, sometimes counter to the criticisms or comments made by the agent".<sup>11</sup>

29. The fees for the work done by the second team of agents were calculated on the basis of the decisive cost of the first project. That amount should have been adjusted immediately after the issue of the new general estimate, which included a probable decisive cost of 51.5 million francs, i.e. approximately double that of the initial project. In actual fact they were carried over to the budget voted on in July 2003, in other words three and a half years after the issue of the estimate amending the cost determining the fees.

30. At this stage of the investigation, if the increase in architects' fees of 3.5 million francs is combined with cost savings of 5.8 million francs and various reproduction costs of about 40,000 francs that were omitted, the known costs in relation to which the budget should have been approved in September 2000 may be estimated to be in the region of 68.4 million francs instead of 59 million francs (see table in Annex 1).

**WIPO comment:**

*The General Assembly of the Member States was informed of the Organization's decision to keep the project within a budget allocation of 59 million francs. It then emerged that technical implications, which had been insufficiently taken into account, would make it impossible to remain within that amount.*

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<sup>11</sup> See the report by the FG Pool agent on March 2, 2004, page 1

Budget approved by the General Assembly in July 2003 (65.885 million francs)<sup>12</sup>

31. The revised program and budget proposal for 2004-2005 (document WO/PBC/7/2) mentions in paragraph 295 an increase of 9.8 million francs in the cost of the project, which, when added to the 59 million francs already approved, brings the budget to 68.8 million francs and not 65.885 million francs, as mentioned in table no. 11 of the same document. WIPO took due account, in the budget for the 2000-2001 accounting period, of a 2.9 million franc reduction (on the 9.8 million francs) as a budgetary adjustment. That reduction does not in any way correspond to a lessening of the cost of the project: it should have been carried over to the 2002-2003 accounting period, but was not.

32. The Buildings Division informed the Office of the Controller that its approach to the budget submitted to the General Assembly did not correspond to the costs "*known, approved and incurred to date.*"<sup>13</sup> If we were actually to consider all the commitments made as of the date of the General Assembly of July 2003, it would be necessary to refer to an amount of 10.7 million francs rather than the 9.8 million mentioned above, i.e. an additional 0.9 million francs (see table in Annex 1).

33. As already mentioned, the contract execution procedures did not allow implementation conforming to the safety and operating rules. For another thing, savings were made at the expense of a standard of equipment that was, however, elementary in relation to this kind of administrative building. It seems clear that these savings could not be made. The conditions in which the contract was entered into carried the risk of WIPO's position being weakened, if a conflict situation were to arise with the general contractor. In addition, the data brought to the notice of the General Assembly with a view to the approval of the budget were not accurate. More efficient project management and better coordination between the Buildings Division and the Office of the Controller would have made it possible to set the correct budget cost at 68.4 instead of 59 million francs in September 2000, and 69.8 instead of 65.885 million francs in July 2003 respectively.

**Recommendation No. 3:** The quality of the information presented to the General Assembly with a view to approval of a construction budget should be guaranteed. In addition, all data should be duly documented. It should be ensured that the contracts drafted allow coherent implementation of building projects, with due respect for the safety standards in force, and which are not prejudicial to WIPO.

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<sup>12</sup> See table in Annex 1

<sup>13</sup> According to an email of February 7, 2003, sent to the Office of the Controller by the Buildings Division

## **Overall project management**

### Call for tenders, awards

34. Before January 26, 2001, when Office Instruction No. 3/2001 came into effect, the WIPO Financial Regulations were the only regulatory instrument governing procurement procedures and the award of contracts.

35. With regard to the observance of the regulatory framework mentioned above, random checks were made on six invitations to tender for general contract work, demolition, surveying work, site security and the manufacture of a building model. The invitations to tender, or where applicable the awards which were checked, represent a total of 70.5 million francs. Subject to the findings regarding the manner in which the contract with the general contractor was drawn up (see paragraphs 26 and 27), the processes for invitations to tender and awards were adhered to.

36. I should state that the interim audit, which took place in 2001, had revealed an award for an amount of 1,686,813.90 francs. There had been no competition for the latter. The services rendered corresponded to preliminary project and final project studies in relation to the first project (late 1998). Office Instruction No. 3/2001, which was issued subsequently, made it possible to rectify these procedures. My recommendation at the time had to do with observance of the procedures established for all purchases and contract awards.

### Commitments, payments

37. Random checks to determine observance of the processes for commitments to pay and actual payments of expenses pursuant to Articles 2 and 3 of the Financial Rules under the WIPO Financial Regulations were made on three commitments totaling 57,272,429 francs. Those checks revealed that the commitments and the payments were in line with the rules in force, subject to the findings mentioned in paragraphs 40 to 51 below.

### Final Accounting<sup>14</sup>

38. Delivery was taken of the completed project on September 30, 2003. The record of the joint verification procedure, which is normally drawn up at the time of project delivery and countersigned by both parties, was not available at the time of the audit, i.e. eight

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<sup>14</sup> See table in Annex 1

months after the date in question. A guaranteed deposit was handed to WIPO by the general contractor in January 2004. Three months later, the works manager informed the general contractor that a number of contractual obligations, concerning in particular sub-contractors and the rectification of building defects, had not been met by the general contractor. Consequently, it informed the latter that “*a final payment of the outstanding balances will be made according to the results of the rectification of the defects*”, i.e. 326,891 francs. A list of “*pending items*”, relating to building defects that had not been rectified, was sent to the general contractor at the end of May 2004. Consequently, the final accounts for the building work could not be obtained at the beginning of this audit.

39. The contract with the general contractor is subject to SIA Standard 118 (see Article 2.5 of the contract of November 13, 2000). Article 154 of the standard provides that “*the contractor shall submit the final accounts to the works management not later than two months after final delivery of the project*”. The defects noted in the May 2004 list are more in the nature of minor defects, regarding which the works management should have set an “appropriate time limit”<sup>15</sup> for their rectification in the record of the joint verification of September 30, 2003. Apart from that, the conditions governing project delivery, specified in Article 12.3 of the contract of November 13, 2000, between the general contractor and WIPO, were not observed, as no record was produced of the joint verification.

**Recommendation No. 4:** Contractual procedures, or as the case may be the standards in force for project delivery, should be complied with.

**WIPO comment:**

*The record of project delivery was indeed produced in due time but, on account of the illness and death of the director of the general contractor, followed by the bankruptcy by one of the contractor's important sub-contractors, it remained unsigned.*

**Additional claim**

40. As a result of our request to WIPO for a “statement to the effect that the information provided is complete” on June 23, 2004, namely at the end of our audit, my colleagues were presented with an additional claim dated May 24, 2004, from the general contractor. It amounts to 1,400,000 francs net, and relates to the elimination of savings, alterations to orders and additional work done over and above the basic contract of November 13, 2000, the additional contract of July 27, 2001, and the different amendments thereto. In view of the fact that the existence of that document had not been brought to my colleagues' notice at the time of the audit, the amount was not incorporated in the final accounts (Annex No. 4) which were drawn up and made final in agreement with the Buildings and Finance Divisions. It was, moreover, not charged to the 2002-2003 accounting period, as there was no provision for it. This state of affairs is all the more regrettable since, on a number of occasions during the audit, the question was asked whether the accounts submitted did actually include all the costs

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<sup>15</sup> See Article 160 of SIA Standard 118

inherent in the project, and whether there were any disputes pending with the general contractor. Apart from that, the Buildings Division confirmed, on June 3, 2004, the accounts mentioned above which I submitted to it without mentioning any other expenses.

41. As a result of further inquiries made as a result of the presentation of this additional invoice, my colleagues noted that the first list of the general contractor's claims was dated October 9, 2003. It therefore reached the WIPO Buildings Division within the period normally dictated by the standards, i.e. two months after the delivery of the project, for the submission of final accounts by the contractor (see paragraph 39). The works management had therefore long been aware, and well aware, of the claims made by the general contractor. It had moreover expressed concern on that subject in October 2003, in correspondence addressed to the Controller, the Procurement and Contracts Service, and the WIPO Legal Counsel. In the spring of 2004, the works management again asked its architect to produce a report and adopt a position on the claims made by the general contractor. At the agent's request, the general contractor provided further documentary proof which enabled it to consider the 1.4 million francs as a "*fair price*" for the additional work (see also paragraph 43 below). The Buildings Division was therefore in a position to inform the external auditor, something which was not done.

**Recommendation No. 5:** Make known to the auditor, in a systematic and unrestricted manner, all the costs and claims linked to a construction project. The fact that this information is made available should not be the result of a request for a statement to the effect that the information provided is complete.

**WIPO comment:**

*The observations made in the paragraphs above give rise to the following remarks:*

- *The general contractor considered itself to be entitled to demand 2.1 million francs (in October 2003) followed by 2.7 million francs (in December 2003) from WIPO; these claims were completely rejected;*
- *WIPO asked its agent FG Pool for an analysis of the material circumstances underlying the contractor's claims. FG Pool supplied a report including a series of remarks;*
- *The general contractor subsequently revised its claim downwards: 1.4 million francs.*
- *It was only in the month of June, while the audit was already well advanced, that FG Pool confirmed to WIPO the value of 1.4 million francs;*
- *On September 2, 2004, the general contractor proposed a reduction in its claim to 0.7 million francs.*
- *WIPO considered that the successive variations in the claims made by the general contractor (2.7 million to 0.7 million francs) clearly showed that the attempts made by*

*the contractor were unjustified. For that reason, the Organization did not inform the auditor at an earlier date.*

42. The Buildings Division contests the claims made by the general contractor since they are not based on amendments, as required by Article 6 of the contract. The position adopted is, paradoxically, diametrically opposed to that of the agent.

**WIPO comment:**

*There is no contradiction between the opinion of FG Pool as to the material circumstances underlying the project and the opinion of the Buildings Division as to the legal liability of the exchange value of said project.*

43. The agent was unable to assess all the claims made by the general contractor, given that the details of the contractual negotiations between WIPO and the general contractor were not fully disclosed to it. It is moreover surprising to note that the body operating as the works management commissioned the architectural management to verify claims regarding the conduct of work. Verification of the project is the main task of the works management (see paragraph 9), since the architectural management only becomes involved in that it must supervise “*the compliance of the project with the architectural requirements*”<sup>16</sup>. The contract drawn up with the architectural management also stipulates that it will not participate in the auditing of the final accounts.

44. According to the information supplied after the event by WIPO, as part of the procedure provided for in Section 9 of the Additional Mandate for the External Auditing of Accounts, which allows the Director General to make comments, the general contractor is alleged to have stated its willingness to reduce its claim to 0.7 million francs.

**WIPO comment:**

*In December 2004, WIPO agreed to pay the sum of 0.7 million francs to the general contractor who renounced any other claim.*

Elimination of savings

45. As already mentioned in paragraph 27, the additional contract for 5.8 millions francs reinstated a first series of measures for savings initially identified by WIPO. The claims made by the general contractor for around 680,000 francs relate to the balance of savings not reinstated in the project. The report drawn up by the agent states that WIPO took “*arbitrary decisions made in response to the criticisms or remarks made*” (see paragraph 28). *The reductions in quantity and in costs respectively were made on the basis of positions adopted without really analyzing the consequences*”. If the notion of “quantity” is also added, confused as it is with that of “quality” in the descriptions, it can be considered that the

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<sup>16</sup> See Article 4.4.3 of norm SIA 102 (1984).

processes undertaken could have been conducted in a more professional manner. Furthermore, aware that the operating procedures defined in the contract did not allow implementation which observed the safety and operating rules, the works management should have monitored the project in a more conscientious and substantive manner in the course of the work undertaken.

46. The works management never actually refused such work. For example, as regards the choice of the quality of floor stone, the works management simply specified in a letter dated June 2002, i.e. seven months after being informed accordingly by the contractor, that the “*work could not give rise to additional charges*”. As regards other work, the Buildings Division satisfied itself with the commitment made by the contractor in a site meeting report which was not, moreover, endorsed by the participants. It would certainly have been wiser to request a detailed offer from the general contractor on a systematic basis, as stipulated by Article 6.3 of the basic contract, given that any change in the quality of operation was also subject, in the same way as increases in costs, to written approval by the client, prior to any actual operation. In the opposite case, such work was to be systematically refused in writing. Obviously, that was not done. According to the agent’s remarks, they appear even to have been tacitly accepted by the works management. Furthermore, the WIPO Legal Counsel suggested that an agreement should be found and an appropriate sum provided, given that a tacit agreement actually corresponds to a contract.

#### Additional work

47. The additional work is divided between specific requests made by WIPO for approximately 45,000 francs and additional work for 300,000 francs. The claims made by the general contractor relating to WIPO’s requests are certainly difficult to contest, despite the fact that there were no amendments. As regards the additional work, although it was not described in the invitation to tender, it was considered by the agent consulted to be essential or to provide an increase in the value of the building. What is certain is that no amendment was produced for the work in question. The works management adopted a position on about one-third of the requests made in correspondence with the general contractor, without making a formal refusal.

48. If reference is made to the case law of the host State, the Federal Court relies more on the notion of an additional value for a building rather than on the existence of amendments to justify additional work being undertaken. This statement by the WIPO Legal Counsel is consistent with the concerns mentioned by the works management in an internal letter dated October 2003. In addition, the contestable conditions of the contract drawn up by WIPO with the general contractor do not strengthen WIPO’s position in this case.

#### Alterations to orders

49. Alterations to orders gave rise to additional costs of 375,000 francs. In the agent’s opinion, a description of an invitation to tender at times badly worded, optimization of areas and an unclear position adopted by WIPO justify this amount. The works management adopted a position on work representing approximately one-tenth of the amount indicated above.

50. To conclude, the checks relating to this additional invoice were made on the basis of documentary evidence submitted and give rise to the following observations:

- non-observance of Article 6 of the contract of November 13, 2000 “contract amendment”,
- the systematic lack of contractual amendments for all additional work,
- the systematic non-refusal by the works management of additional work not forming part of the contract drawn up,
- the absence of complete documentary evidence, estimates and invoices, covering all the claims made by the general contractor.

51. Taking into account all the elements mentioned in the previous paragraphs, my colleagues consider that all the claims made by the general contractor were in fact realized, thereby confirming the position adopted by the agent (see its report of March 2, 2004, and letter of June 7, 2004).

**Reservation:** Consequently, on the basis of the documentary evidence submitted, it has not been possible to verify the justification for all the approximately 1.4 million francs of claims made by the general contractor. In the absence of convincing proof, and since, in objective terms, it is impossible to verify all the additional charges, I have been obliged to issue a reservation in my audit opinion on that subject.

***WIPO comment:***

*WIPO reiterates the comments made in the previous paragraphs and fully associates itself with the reservation made by the auditor.*

*The unjustified nature of the claims for 2.1 million, 2.7 million and then 1.4 million francs by the general contractor was proved by the fact it accepted a payment of 700,000 Swiss francs. WIPO was determined to make this settlement, in view of the additional value made for the building, a notion taken into account by the Swiss courts in the case of dispute.*

**Recommendation No. 6:** Within a construction project, it is essential to put in place a management project, and an individual competent works management which complies with the established procedures, uses and standards, respects the strict application of contractual arrangements and which is able, since it is aware of the existence of potential risks, to introduce appropriate measures rapidly. A “proactive” attitude is strongly recommended.

## **Project accounts and financial management**

### Finance Division

52. The Finance Division consolidated the accounts with the Buildings Division, dated December 31, 2003 (see Annex No. 3). This exercise allowed certain errors to be corrected

and demonstrated an overrun on payments relating to a commitment and expenditure charged to the budget for non-building accounts.

### Buildings Division

53. The verification of costs carried out by the Buildings Division and finalized on April 19, 2004 (see Annex No. 2), is based on three main documents. With the first document it is not possible to bring the approved budget figures into line with those of the architect's estimate, since the approved budget is not based on that estimate (see also paragraph 18 above). The second auditing document brings to light all the project-related awards and payments, irrespective of their real link to the budgets approved by the Assembly. This document has not allowed the precise situation to be established with regard to the final breakdown of expenditure at the time of the audit. Finally, the last document produces a list of all the payments made up to that date.

54. In coordination with the Buildings and Finance Divisions, with the incorporation of different corrections, my colleagues have produced the final breakdown of expenditure for the project under review. The final figure at the time of the audit is 70,625,107 francs (see Annex No. 4). This figure was validated during the audit done by the Buildings and Finance Divisions. It does not, however, take into account the additional invoice of 1.4 million francs, in which case a figure of 72,025,107 francs should be considered.

55. The final breakdown of expenditure produced during the audit (see Annex No. 4) allowed my colleagues to identify expenditure not incurred and expenses not included in the account for the ex-WMO building, either because:

- the Controller changed the activity code allocated by the Buildings Division,
- the costs were considered by the Buildings Division to form part of the budget approved by the General Assembly but not by the Controller,
- or costs dependent on the project were not considered in the account for the ex-WMO building.

**Recommendation No. 7:** Better coordination is required between the Buildings Division, the Finance Division and the Controller as regards the allocation of expenditure.

### Funding

56. The sources of funding come from the budget of 30.4 million francs approved by the General Assembly in March 1998 and updated in September 2000 to 59 million francs, and also in July 2003 to 65.885 million francs.

57. The table below provides details of the expenditure:

	(SFr)	(SFr)
<b>APPROVED BUDGET</b>	65,885,000	
<b>BUILDING PROCUREMENT</b>		34,290,148
Account 400.11.01 – Building procurement		
<b>EXPENDITURE</b>		
Renovation, modernization and extension of the former WMO building		
Account 400.11.2 – WMO building, Renovation and modernization	69,781,618	
Regular budget	524,484	
Account 450.40.11.33 - Insurance	119,325	
Account 450.40.20.10 – Representation costs	6,829	
Purchase orders not submitted or not approved	194,868	
<i>Discrepancy credit carried over</i>	- 2,017	70,625,107
Intermediate total		<b>104,915,255</b>
Additional claim		1,400,000
Total		106,315,255

58. Excluding building procurement, an overrun of expenditure is observed between the approved budget (65,885,000) and total expenditure (70,625,107) of approximately 4.7 million francs, or 6.1 million francs respectively if the additional invoice is taken into account.

59. In general terms the treatment of expenditure has been considered to comply with the WIPO Financial Regulations.

60. The on-balance sheet value is 69,781,618 francs. Certain charges amounting to 845,506 francs were considered to be operating expenditure and allocated to the ordinary budget devoted to premises, as authorized by the General Assembly of the Member States (paragraph 295 of document WO/PBC/7/2).

61. The value of the building insurance coverage against fire was, as of October 1, 2003, 65 million francs for a total investment of around 105 million francs, excluding the additional invoice.

## CONCLUSIONS

62. The lack of rigor and the numerous failings relating to the management of the project to renovate, modernize and extend the former WMO building in Geneva did not allow transparent project management consistent with the budgets approved, nor management in line with the additional work done. From an additional cost estimate of 30.4 million francs, the final detailed accounts stood at more than 70 million francs, without all the phases being

duly documented. The actual costs of the project were higher than the budgets approved by the General Assembly. These discrepancies have not been correctly brought to the attention of the Member States. The final detailed accounts show an overrun of 4.7 million francs in relation to the last approved budget updated on several occasions, and by 6.1 million francs respectively if the additional claim of 1.4 million francs is taken into account.

63. Given the important construction project in progress within WIPO, I consider that such deficient project management should be remedied urgently. In a previous report, I had already noted weaknesses concerning the estimate of the costs of the project (see my report of June 24, 2002 concerning the development of the new administrative building, paragraph 55). Since at that time I was not completely confident as to the way in which the construction projects were managed internally, I suggested that external project management be put in place to carry out the management and supervision essential to any construction project (see my report of June 24, 2002 concerning the assessment of the new administrative building, paragraphs 55, 73 and 74). The observations made in this report show the importance of this recommendation and fully justify it being put in place.

**Recommendation No. 8:** Establish external independent project management for any new construction project on the scale of that which is the subject of this audit.

***WIPO comment:***

*WIPO thanks the auditor for his opinion and useful advice.*

*The estimates of 30.4 million francs and the final accounts for more than 70 million francs did not relate to the same project.*

*The Member States approved amendments to the project and were kept informed of the progress of the work.*

*The Organization wishes to state that two major accidents occurred on the site: a fire caused by workers and also subsidence which delayed the work by at least six months, for which the financial settlement was greatly profitable to WIPO.*

*Despite that fact, the final result for the whole operation to renovate, modernize, convert and extend the former WMO building is positive.*

- *The Procter & Gamble building, adjoining the former WMO building, was sold for more than 100 million francs, a price which is perfectly comparable to the operation to renovate the former WMO building, whereas a renovation is more costly than a new construction and the capacity in terms of workplaces in the Procter & Gamble building is 400, compared to 450 for the renovated former WMO building.*
- *The renovated former WMO building meets WIPO's needs. Aesthetic and functional, it is connected in physical terms to the other buildings, which is important for the Organization's daily operation.*

(signed)

K. Grüter  
Director  
SWISS FEDERAL AUDIT OFFICE  
(Auditor)

Annexes:

1. Evaluation of the general estimate, budget and awards
  2. Final accounts drawn up by the Buildings Division (April 19, 2004)
  3. Final accounts drawn up by the Finance Division (December 31, 2003)
  4. Final accounts drawn up by the Auditor (June 3, 2004)
  5. Audit opinion
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[Appendix 1 follows]