

# Vendor Sanctions

## Contents

Vendor Review Committee .....	3
Disclosures .....	5
The Ineligibility List .....	6
Monitoring .....	7
Exigency .....	7
Exceptions .....	7
Rehabilitation.....	8
Sanctions Proceedings .....	8
Interim Suspension .....	9
Vendor Review .....	9
Submissions to the VRC .....	10
PSU/BMS' reply .....	10
Respondent's sur-reply .....	10
Additional documentation and information.....	10
Language .....	11
Communications .....	11
Extensions of time.....	11
Computation of deadlines .....	11
Other Procedures.....	11
Failure to submit a timely response .....	11
Admissions .....	12
Mitigating circumstances.....	12
Aggravating circumstances .....	12
Settlement .....	12
Materials .....	12
Distribution of submissions .....	12
Distribution of submissions to others.....	13
Exculpatory materials .....	13
Withholding of sensitive materials .....	13
Privileged materials.....	13

Administrative Proceedings .....	13
Record .....	13
Information and documentation .....	14
No hearings .....	14
Closed Deliberations .....	14
Confidentiality.....	14
Minutes .....	14
Determinations of the Vendor Review Committee .....	15
Voting.....	15
Determinations .....	15
Basis for determinations.....	15
Involvement in proscribed practices.....	15
Insufficient basis to determine involvement in proscribed practices.....	15

1. Where there is conclusive evidence of proscribed practices by a Respondent, sanctions can be imposed by the Chief Procurement Officer. These can result in a Respondent being placed on the Ineligibility List. There may be exigent circumstances where eligibility is restored. Otherwise, Respondents may regain eligibility when they are at least halfway through the sanctions period, based on demonstrating corrective measures.
2. The VRC may recommend, and the CPO may impose any of the following sanctions or a combination of them, according to VRC sanctioning guidelines. The Respondent will be notified of any sanctions imposed. Sanctions affecting a respondent's eligibility will be the basis of common actions as described below, but the details of which will otherwise remain confidential between UNDP and the Respondent. Sanctions can include:
3. Censure: A letter of reprimand based on the Respondent's conduct. Censure does not affect Respondent's eligibility to participate in UNDP procurement, but its existence will be an aggravating factor in any future decisions to impose additional sanctions.
4. Ineligibility/debarment: A formal declaration that a Respondent is ineligible for a period of time to (a) be awarded and/or partake in contracts financed, administered or executed by UNDP, (b) conduct new business with UNDP as an agent or representative of other vendors, (c) partake in having discussions with UNDP regarding new contracts. Exceptionally, the Vendor Review Committee may recommend permanent debarment.
5. Other sanctions: The Vendor Review Committee may recommend other sanctions appropriate to the circumstances at hand, including reimbursement or special conditions on future contracts.

### **Vendor Review Committee**

6. Purpose and Mandate. The Vendor Review Committee (VRC) is an internal technical administrative body located at UNDP Headquarters in New York, created by the Bureau for Management Services (BMS) and tasked with making recommendations to the Chief Procurement Officer (CPO) for consideration in rendering the final UNDP decision regarding Vendor Sanctions.
7. General Procedures. In order to formulate its recommendations, the VRC shall analyze information on alleged actions and omissions by Vendors that may potentially constitute proscribed practices supplied internally by HQ Units, Outposted HQ Units and Business Units, as needed, and shall receive and consider information provided by Vendors subject to Sanctions proceedings. The CPO shall appoint regular members of the VRC as well as alternate members who shall serve in the event of a conflict of interest, as defined in section 5, below.
8. Membership of the VRC. The VRC shall consist of six (6) members, with the Director of the Office of Operations, Legal and Technology Services/Bureau for Management Services (OOLTS/BMS) who oversees procurement functions serving as Chairperson. The Director of the Office of Sourcing and Operations/Bureau for Management Services (OSO/BMS) shall be an ex officio member of the VRC. The VRC may also include as members: one Senior Officer from a Regional Bureau; one Senior Officer from a Central Bureau, one Senior Officer from UNV or UNCDF and two Procurement Advisors from PSU/BMS. VRC members shall be technically competent in procurement, but may not have transactional interests in the procurement actions being analyzed. Staff Members will serve as needed, concurrently with their existing functions. Each member shall

be appointed for a term of 2 years, with the possibility of one 2 year reappointment, for a cumulative maximum of 4 years, or until the member's earlier resignation, reassignment, or separation from UNDP. Members of the VRC shall sign a declaration of impartiality prior to any case before the VRC, and these declarations shall form part of the Record.

9. The Chairperson of the VRC may request the presence of a Legal Advisor from the Legal Office (LO/BMS), as well as Officers from the Office of Audit and Investigations (OAI) or Ethics Office (EO), as needed. Their presence will be in an advisory capacity within the scope of their areas of expertise. There are not members of the VRC and therefore cannot vote on matters before the VRC.
10. Responsibilities of the VRC. The VRC shall make recommendations, based on the analysis of pertinent internal and external information regarding actions or omissions by Vendors that may have engaged in proscribed practices, as defined by the Vendor Sanctions Procedures. Its responsibilities include:
  - a. Reviewing and recommending to the CPO the dismissal or approval for submission to Vendor(s), Notices of Administrative Action (NAA) drafted by the Secretary of the VRC;
  - b. Analyzing and recommending to the CPO the rejection or acceptance of a request for interim suspension of a Vendor;
  - c. Analyzing and recommending to the CPO the rejection or acceptance of settlement offers presented by the Vendor(s);
  - d. Requesting any additional information or advise it may deem necessary in order to make a recommendation;
  - e. Determining, in order to formulate a recommendation to the CPO, whether or not the information submitted during the course of the Sanctions proceedings is sufficient to support a finding that a Vendor has engaged in any of the proscribed practices listed in the Vendor Sanction procedures;
  - f. When information is deemed sufficient, recommending specific sanctions or other corrective and rehabilitative measures to the CPO for his or her consideration;
  - g. Analyzing and recommend to the CPO the rejection or acceptance of Rehabilitation requests;
  - h. Determining, in order to formulate a recommendation to the CPO, if it would be in the best interests of UNDP, in a specific procurement action to make an exception and suspend the effects of sanctions imposed by other UN Agencies;
  - i. Determining, in order to formulate a recommendation to the CPO, if it would be in the best interests of UNDP to make an exception and suspend the effects of sanctions imposed by other UN Agencies in a specific procurement action;
  - j. Recommending to the CPO the referral of matters on a strictly confidential basis to or other agencies in the UN System or national authorities;
  - k. Reporting on its activities to the CPO, at least once every year;
  - l. Any other duties, consistent with its mandate, or as may be requested by the CPO.
11. Designation and Duties of the Chairperson of the VRC. The CPO shall appoint the Director of OOLTS/BMS to serve as Chairperson of the VRC. In his or her capacity as chairperson, he or she shall be responsible for:

- a. Submitting all VRC recommendations to the CPO;
  - b. In consultation with the CPO, making decisions regarding recusal of members of the VRC or other parties involved with the proceedings;
  - c. Convening and presiding over VRC meetings, where he or she shall vote as a member with no decisive vote;
  - d. Liaising with the Heads of other UNDP Offices, including LO/BMS, the Office of Audit and Investigations (OAI) and the Ethics Office at any stage of the proceedings;
  - e. In consultation with the CPO and in accordance with UNDP's procedures, referring matters on strictly confidential basis to OAI, Ethics Office, or other International Organizations;
  - f. Pursuant to the CPO's recommendation, instructing the Secretary of the VRC to inform the Ineligibility List Administrator of new or amended UNDP entries to the Ineligibility List.
12. Appointment and Responsibilities of the Secretary of the VRC. The CPO shall appoint a non-member as the Secretary of the VRC for a period of 4 years. The Secretary of the VRC shall report to the Chairperson of the VRC and shall ensure that the Sanctions procedures are adequately followed and will interact with all interested parties at any stage of the proceedings. The Secretary of the VRC is responsible for:
- a. Reviewing all submissions to the VRC;
  - b. Requesting additional information on any and all submissions to the VRC;
  - c. Channeling all communications among all concerned parties, draft all notices and minutes and ensure that the submissions of other parties relevant to the matter are distributed to the Vendor(s), the members of the VRC, and any advisors;
  - d. Preparing and keeping records of all VRC proceedings and meetings;
  - e. Presenting any requests for interim suspension, re-opening, exigency, exceptions, reinstatement, or settlement to the VRC;
  - f. Channeling all communications and requests between the VRC and the Ineligibility List Administrator;
  - g. Keeping abreast of any and all updates to the Ineligibility List and ensure that PSU/BMS is monitoring UNDP's adherence to the Ineligibility List;
  - h. Answering any consultations that other units may have on Sanctions Procedures;
  - i. Keeping minutes of VRC meetings and submitting to the Chairperson; Notify the Chairperson of the VRC of any Conflict of Interest that VRC Members may have regarding specific proceedings, pursuant to the Sanctions Procedures;
  - j. Ensuring that the data provided by Vendors, as well as the privileged information generated pursuant to VRC functions is fully and adequately protected, pursuant to UNDP Data Protection policies and procedures;
  - k. Performing other functions as may be approved by the Chairperson or the CPO.

## Disclosures

- 13. Information on the sanctioned party will be shared with the UN system through the process detailed in this section. UNDP may also, at its discretion, share such information with other international organizations, host countries and any other parties deemed appropriate.
- 14. Subject to UNDP's disclosure policies, privileges and immunities, and procedures, the Vendor Review Committee may, in consultation with the Legal Office/Bureau for Management Services,

recommend to the Chief Procurement Officer that a matter be confidentially referred to government authorities in host countries for criminal investigation and prosecution in appropriate cases.

15. If, during the course of UNDP proceedings, information comes to light regarding proscribed practices in connection with another international/regional organization that may have been affected, the Vendor Review Committee may recommend to the Chief Procurement Officer that he or she shares information and documentation, on a confidential basis, with other International and/or Regional Organizations, based on a pre-authorized process in accordance with privileges and immunities.

### **The Ineligibility List**

16. The Ineligibility List is a central roster, hosted and maintained confidentially by the United Nations Global Marketplace (UNGM) as a protected electronic document that aggregates information provided by each participating entity, including UNDP. Vendors that are subject to sanctions that affect their eligibility, pursuant to sanctions proceedings, shall be entered into the Ineligibility List for a term starting upon notification of the CPO's decision and ending once they are deemed to be rehabilitated. The Ineligibility List shall have restricted access, and shall not be published or otherwise distributed.
17. UNDP may, at its sole discretion, make available, through a confidential inter-agency network and to designated representatives of each participating entity, the full description of the allegations against the Vendor, the process followed by the Vendor Review Committee, the evidence considered, the findings and the reasoning underlining recommendations.
18. After the Respondent is notified of ineligibility by the Chief Procurement Office, the Secretary of the Vendor Review Committee will provide a written summary of the decision to the Administrator of the Ineligibility List. A vendor included in the Ineligibility List shall be considered an Ineligible Vendor. The summary shall indicate the date of the CPO's decision; the Vendor's name, nationality, address and contact information; the type and duration of the sanction(s); and the proscribed practice that resulted in sanction(s). The Ineligibility List Administrator will notify the Ineligible Vendor within five days of inclusion on the list and provide information included in the entry. The notice will include instructions on how to request correction of errors in the entry.
19. If upon receiving the notice a vendor believes, in good faith, that the entry contains errors regarding identity, type or duration of the sanction, the Vendor must respond to the Secretary of the Vendor Review Committee in writing within five days, specifying the errors and providing supporting documentation. If the sanctioned Vendor mistakenly informs the Ineligibility List Administrator directly, the request should be sent to the Secretary, with a copy to the Vendor.
20. The Vendor may not present documentation or make arguments on the merits of the Chief Procurement Officer's determination of ineligibility. The Secretary of the Vendor Review Committee will confirm or amend the information provided within five days, and the Vendor will be notified in writing. The Secretary will also inform the Ineligibility List Administrator if the list needs to be amended.

21. Any Vendor included in the Ineligibility List will be considered to have lost its eligible status. The Ineligibility List Administrator will inform the Secretaries of all Vendor Review Committees or similar bodies in all participating UN entities of any inclusions or deletions to the Ineligibility List within two days.

### **Monitoring**

22. The Secretary of the Vendor Review Committee will periodically verify that no new contracts have been awarded to Ineligible Vendors and that they are not actively participating in UNDP procurement. When the VRC's determination or settlement agreement so requires, the Secretary of the VRC will request Vendors to submit periodic reports on the status and implementation of any corrective actions and will inform committee members of monitoring activities.

### **Exigency**

23. When the Director of the Procurement Support Unit/Bureau for Management Services considers that circumstances warrant the participation of an Ineligible Vendor in a UNDP procurement process, she or he may request a waiver that temporarily suspends the effects of the sanctions imposed by UNDP or another Agency. A written request summarizing the reasons behind the need for the particular Vendor's participation will be presented to the Secretary of the Vendor Review Committee. The VRC shall recommend that the Chief Procurement Officer approve or reject the request.
24. The Chief Procurement Officer may grant the waiver requested by the Director of PSU/BMS if circumstances warrant unusual or immediate action, such as a sudden and unforeseen crisis, or any urgent situation that requires extreme effort or attention that may only be provided by the Ineligible Vendor. The waiver by the CPO makes an Ineligible Vendor eligible for an award of contract by UNDP, exceptionally and is valid on a one-time basis. The Secretary of the Vendor Review Committee will notify the Director of the Procurement Support Unit/Bureau for Management Services and the Ineligible Vendor of the decision.

### **Exceptions**

25. Pursuant to its mandate, UNDP may exceptionally opt out of participating in common actions with regards to specific Ineligible Vendors. If the Director of the Procurement Support Unit/Bureau for Management Services considers that it is in the best interest of UNDP to work with a particular vendor, s/he may request from the Vendor Review Committee that an Ineligible Vendor, included in the Ineligibility List by another Participating Agency, is made exceptionally eligible. The Director of Procurement Services Unit/Bureau for Management Services will present the reasons for the request in writing to the Secretary who shall submit it to the VRC for its consideration. The VRC will recommend that the Chief Procurement Officer approve or reject the request.
26. The VRC may recommend that the CPO grants the request on a case-by-case basis, when the Director of PSU/BMS demonstrates that UNDP has a compelling interest, such as when the Vendor is the sole provider of proprietary technology or life-saving medicine or treatment, or when monopoly conditions exist in the country where the procurement action is to take place.

27. The Secretary of the VRC will promptly notify the Director and the Vendor of the decision. The notification will indicate that the exception is only applicable to the UNDP's specific procurement action that prompted the request. An exception makes a Vendor eligible on an exceptional basis and may participate in the specific procurement action that originated the Director of Procurement Services Unit/Bureau for Management Services request. The decision made by the CPO will be immediately notified to the UNGM for appropriate action.

## **Rehabilitation**

28. When a vendor completes the sanction period, the Ineligibility List Administrator shall note the change in status, in strict observance with UNGM data protection provisions. All UNGM entities should be promptly informed. A change of status does not constitute the rehabilitation of the Ineligible Vendor. A formerly Ineligible Vendor wishing to restore its business relationship with UNDP may request to have his, her or its legible status restored by the CPO when the sanctions imposed and corresponding entry to the Ineligibility List have expired.
29. Prior to the expiration of sanctions, Ineligible Vendors may request rehabilitation when at least half of the sanctions term has elapsed, provided they can demonstrate that corrective measures have been put in place and have fully met or gone beyond the requirements of the CPO's decision. . The request for rehabilitation must be submitted in writing to the Secretary of the Vendor Review Committee, accompanied by supporting documentation. The Secretary within five days will share the information with the VRC, which will recommend that the Chief Procurement Officer accept or reject the request within 30 days. In order for the VRC to formulate its recommendation, the Sanctioned Vendor must provide sufficient information attesting to the medium- to long-term impacts of corrective measures, to the deterrent effects resulting from the sanctions imposed, and must show that re-establishing its eligibility will be a sound business decision and be in the best interests of UNDP.
30. Each Affected Agency will process requests for rehabilitation and inform the Ineligible Vendor of the outcome of the request. If the Sanctions Board determines that the Ineligible Vendor's request for rehabilitation should be granted, the Secretary of the Sanctions Board of the Affected Agency's Vendor Review Committee shall inform the Ineligible Vendor. When needed, the Secretary of the Sanctions Board will also submit a summary of the determination to the Ineligibility List Administrator requesting a change of status of the entry. If no more entries concerning the Vendor exist on the list, the Vendor will regain status as an Eligible Vendor.

## **Sanctions Proceedings**

31. Intake. Business units shall notify OSO/BMS of any instance where there are allegations or concerns of potential vendor involvement in Proscribed Practices. The Director of OSO/BMS shall submit allegations to OAI for their analysis and investigation where appropriate. Business units may also refer the matter directly to OAI through its intake mechanisms, such as the OAI hotline. OSO/BMS shall share all relevant information and documentation received that may aid in the preliminary assessment of the matter by OAI. The duration of this assessment will be determined by OAI and communicated to the Director of OSO/BMS. Upon its completion, OAI shall communicate to the Director of OSO/BMS and the Secretary of the Vender Review Committee its decision to dismiss the matter or launch a formal investigation.

32. Closure after preliminary assessment of Allegations. If OAI finds that there is insufficient evidence to substantiate the matter or determines that the allegations are not factually based, a Closure Report will be issued and the matter will be closed. The Secretary of the VRC shall make and include a Closure Memo for the Record.
33. Investigation Report. If OAI decides to launch a full investigation, upon completion of its investigation, OAI will submit and issue the Investigation Report together with accompanying exhibits to the Secretary of the VRC.
34. Notice of Administrative Action. Where an OAI investigation obtains credible evidence of proscribed practices, the Secretary of the VRC shall, upon receipt of the Investigation Report from OAI, draft a Notice of Administrative Action (NAA) and present its content to the VRC for its consideration. The NAA shall: Identify each Individual or entity that may be subject to Sanctions; Identify the alleged proscribed practices; Summarize relevant facts that form the basis for allegations based on the Investigation Findings and other relevant information; State that the Vendor has an opportunity to respond to the NAA in writing within thirty (30) days and that failure to do so may result in the VRC considering that the Notice has been admitted in full; State that the VRC may recommend that the CPO impose Sanctions; State that UNDP may request, after sanctions have been imposed, that the Vendor be included in the Ineligibility List; Specify any other information that the Secretary of the VRC finds relevant to the allegations; and state that any information or data provided by UNDP is confidential and only intended for the purposes of Sanctions Proceedings, that VRC work product is privileged, and that UNDP is not required to provide further information or data as such is protected from disclosure and as part of UNDP archives under its privileges.
35. Approval of the NAA. The VRC shall review the draft NAA and recommend its dismissal or approval by the CPO. If the CPO does not approve the NAA, the Secretary of the VRC shall make a closure memo and place it in the file, closing the matter.

### **Interim Suspension**

36. In a situation where the VRC determines, based on information made available to the Secretary of the VRC by OAI, PSU/BMS, LO/BMS or any other HQ Unit, that an ongoing business relationship with a Vendor involved in Sanctions Proceedings as a Respondent would not be in the best interests of UNDP, the VRC may recommend to the CPO that the Respondent be suspended from participating in UNDP procurement actions pending the outcome of the Sanctions Proceedings.
37. An interim suspension means that the Respondent may not be part of future bidding exercises until the CPO makes his or her final decision regarding corrective measures.
38. The Respondent and all interested parties shall be notified of the Interim Suspension in writing by the Secretary of the VRC, and it will specify if the Respondent may be considered in ongoing procurement actions. An Interim Suspension will not be grounds for disqualification in instant procurement actions.

### **Vendor Review**

39. Issuance of NAA. Upon approval of the Notice by the CPO, the Secretary of the VRC shall issue the NAA, providing copies of its text and any and all attachments (subject to confidentiality and privilege of UNDP) to each Respondent. The copies shall be delivered by courier service or by any other means that provide evidence of delivery. The Secretary of the VRC shall record the delivery dates of the NAA on file.

### **Submissions to the VRC**

40. The submissions to the VRC, before it makes a recommendation to the CPO, shall consist of the following: (i) the Notices; (ii) a Response by the Respondent, where provided; (iii) Exceptionally, and when requested by the VRC, a Reply by the Director of PSU/BMS; (iv) Exceptionally, a Sur-reply by the Respondent. The VRC will not deliberate its recommendation until it is satisfied that all submissions have been received and reviewed by its members.
41. Respondent's Response. The Respondent(s) shall submit written materials to the Secretary of the VRC within thirty (30) days following the receipt of the NAA. The Response must present arguments and provide supporting documentation or information in response to the allegations presented. The Response will be deemed to have been submitted upon actual receipt by the Secretary of the VRC. The submission must include certification, signed by an individual Respondent or its authorized agent that the information contained therein is truthful and correct to the best of the signer's knowledge. The Secretary of the VRC may inform the Respondent if the VRC needs further information in order to consider and deliberate the matter fully. The Chairperson may instruct the Secretary of the VRC to submit a copy the Respondent's Response to the Director of OAI within five (5) days of receipt of the response and request their comments in writing for the VRC's consideration within fifteen (15) days. The Chairperson may also request that OAI undertakes further investigation on facts raised by the Respondent, as needed.

### **PSU/BMS' reply**

42. If the VRC considers that further information is needed, it will submit, within five (5) days of receipt of the response(s), a copy to the Director of PSU/BMS. The Director of PSU/BMS will have fifteen (15) days to provide a reply together with relevant documentation to the Respondent's response. The Reply shall be limited to arguments and documents offered in rebuttal and will be submitted to the Secretary of the VRC, who will submit a copy to the Respondent(s).

### **Respondent's sur-reply**

43. The Respondent will have fifteen (15) days after receipt of the PSU/BMS Reply to present arguments and information and documentation in specific rebuttal to the Reply. The Sur-reply will be deemed to have been submitted upon actual receipt by the Secretary of the VRC. The submission must include certification, signed by an individual Vendor or its authorized agent, that the information contained therein is truthful and correct to the best of the signer's knowledge.

### **Additional documentation and information**

44. If new information and documentation becomes available to either PSU/BMS or the Respondent after the submission of their respective written submissions and before the conclusion of the

Vendor Review, the party may submit such new evidence to the Secretary of the VRC. The submission must include a brief explanation on the significance of the new documentation or information, and it must be certified as truthful and correct by the Respondent. The VRC will consider the additional documentation and information if (i) it was not known to, or could not reasonably have been known to, or by reasonable due diligence could not have been discovered by the party at the time of its submissions; and (ii) if such information and documentation is relevant to the VRC's recommendation. The VRC may, at its discretion, request the other party to respond to the additional materials, as needed.

### **Language**

45. All written materials submitted to the VRC shall be in English, French or Spanish. Exhibits and attachments may be submitted in their original language but must be accompanied by a certified translation into English, French or Spanish.

### **Communications**

46. Communications related to the Vendor Review shall be sent by mail with delivery confirmation, facsimile with "confirmation of transmission", or by electronic mail with confirmation of transmission. The Secretary of the VRC shall maintain records of all proceedings, including the date of receipt of Notices and successive submissions. If a Respondent refuses delivery of the Notice, the Secretary of the VRC shall determine the date of receipt. If a Respondent's address is unknown or fictitious, the Secretary shall use his or her best efforts to cause the Respondent to receive the NAA. If these efforts are unsuccessful, the Secretary will inform the members VRC, who will determine if the Vendor has received sufficient notice and whether additional efforts are required. The VRC may take action where it deems necessary when delivery could not be confirmed.

### **Extensions of time**

47. Either party, upon request and for good cause shown, may request an extension of time to the Secretary of the VRC, who will present the request to the VRC. The VRC may, at its sole discretion and when it considers that the request is not a delaying tactic or an abuse of sanctions process, grant reasonable extensions of any deadlines.

### **Computation of deadlines**

48. Unless stated otherwise, "days" as used herein means calendar days, and do not include weekends and/or holidays. Holidays are the holidays officially recognized by UNDP. If the last day of any period falls on a day in which UNDP is not officially open for business, the term shall run until the end of the next day on which UNDP is officially open.

### **Other Procedures**

#### **Failure to submit a timely response**

49. If a Respondent fails to submit a response in accordance with the above, the allegations set forth in the NAA will be deemed to be admitted by the VRC in formulating its recommendation to the CPO, subject to any reconsideration after the sanctions have been imposed.

### **Admissions**

50. A Respondent may admit to all or part of any allegation included in the NAA without prejudice to its right to present information, documentation or arguments regarding mitigating circumstances.

### **Mitigating circumstances**

51. The Respondent may present documentation and arguments regarding mitigating circumstances that may be relevant to the VRC's recommendation. Such information and documentation must be submitted in accordance with the deadlines set forth above.

### **Aggravating circumstances**

52. The Secretary of the VRC or the Director of PSU/BMS may include in their submissions information on aggravating circumstances or information concerning previous sanctions imposed by UNDP or any other Agency in the UN System.

### **Settlement**

53. The Respondent may, at any time before the VRC reaches a final determination on its recommendation to the CPO, submit an offer of settlement to the Secretary of the VRC, who shall submit it to the VRC for its consideration within five (5) days. The settlement offer must include an admission of involvement in proscribed practices, as well as an action plan for mitigating and eradicating the actions or omissions that resulted in the allegations included in the Notice. The VRC will make a recommendation to the CPO, who will approve or reject the settlement offer at his or her sole discretion.

### **Materials**

#### **Distribution of submissions**

54. The Secretary of the VRC shall provide copies of all the submissions relating to a particular matter to all interested parties, promptly after these have been submitted to the VRC. Distribution is undertaken by the Secretary at the VRC's direction and such communication distributing the materials shall clearly state that it does not constitute a waiver of the privileges and immunities of the UNDP. The Respondent does not have the right to request any other information or documentation in the UNDP's possession. If any information is deemed privileged or otherwise confidential or if a person who provided UNDP with information that led to the allegations requested that his or her identity be kept confidential, the Respondent shall not have the right to know the individual's identity but will be informed of the allegations made and any documentation provided, which the Secretary of the VRC may redact in order to secure the informant's anonymity and/or protect any other information it deems privileged or confidential. The VRC may seek the assistance of OAI, LO/BMS and the Ethics Office, as needed.

### **Distribution of submissions to others**

55. The Chairman of the VRC may direct the Secretary of the VRC to provide materials submitted, in accordance with confidentiality principles set out in Paragraph 70 to:
- a. Other Respondents in other sanctions proceedings involving related matters;
  - b. Other Offices within UNDP, as necessary;
  - c. Other affected agencies;
  - d. Other Vendors who may be involved but are not named as Respondents; and
  - e. Others deemed necessary by the VRC.
56. In every case, the Secretary of the VRC will indicate that the information or data provided to a third party is confidential and for the purposes for which it was provided, and UNDP shall not be required to provide further information or data as such is protected from disclosure as part of the archives of UNDP under its privileges and immunities.

### **Exculpatory materials**

57. When instructed by the Chairperson of the VRC, the Secretary of the VRC, shall provide to the Respondent any materials in the VRC's possession that may reasonably be considered as mitigating the Respondent's culpability or as being exculpatory.

### **Withholding of sensitive materials**

58. The Chairperson of the VRC may instruct the Secretary of the VRC to withhold any particular information or documentation, pursuant to its determination that there is reasonable basis to conclude that providing said information or documentation may endanger the life, well-being, safety, health of any person or entity, or that is otherwise sensitive or confidential. The VRC may seek the assistance or advice of LO/BMS or OAI, as needed.

### **Privileged materials**

59. Attorney-client communications and attorney work product of any party shall be exempt from disclosure. The VRC may also determine other materials to be confidential pursuant to the UNDP's privileges and immunities, or otherwise in the best interests of the UNDP. The Chairperson of the VRC shall seek LO/BMS' consent before instructing the Secretary of the VRC to distribute such materials. The VRC may also inform concerned parties that other information or documents are confidential pursuant to the UNDP's privileges and immunities, after receiving confirmation from LO/BMS in this respect, or disclosure is otherwise withheld in the best interests of the UNDP.

## **Administrative Proceedings**

### **Record**

60. In making its recommendations to the CPO, the VRC shall consider a written record consisting of all submissions pursuant to Paragraphs 60-62, records of Vendor Review proceedings relating to the same Respondent, and any facts that have been filed or recorded by local, state, federal or other government agencies in the Respondent's home country or country of incorporation, as well as the country where the procurement action took place, including but not limited to vital records, immigration records, real estate records, and criminal records.

### **Information and documentation**

61. In making its recommendations, the VRC shall have discretion to determine the relevance, materiality, weight and sufficiency of all information and documentation, including witness statements, submitted in support of arguments. The VRC will also consider information and documentation presented concerning mitigating and aggravating circumstances. All information and documentation, as well as any VRC work product, will be protected from disclosure as part of the archives of UNDP under its privileges and immunities.

### **No hearings**

62. The VRC will make its recommendations based on the information and documentation provided. Vendors shall have no right to a hearing. The VRC may, at its discretion, hold hearings when it deems them necessary, also determining their duration and form.

### **Closed Deliberations**

63. The VRC shall deliberate in private. The VRC may, if it so requires, obtain the assistance of internal or external specialized advisors. All communications and work product from such advisors will be privileged.

### **Confidentiality**

64. The records of the proceedings shall be private and confidential. The Secretary of the VRC will manage and archive the records, and will only distribute the required pertinent information for notifications or referrals. Determinations on the sensitive or otherwise privileged information will be made on a case by case basis, balancing the best interests of UNDP with the requirement to provide Respondents with sufficient information to enable them to contest the allegations in a meaningful way. All information and documentation is to be protected from disclosure as part of the archives of UNDP under its privileges and immunities. When disseminating information pursuant to these procedures, a notice may be added stating that, "Nothing in the above provisions or in any of these procedures, and nothing revealed or implied during proceedings under these procedures, or decisions issued, shall be deemed to expressly or implicitly alter, abrogate, or waive any of the privileges and immunities of any UN entity, including its subsidiary organs."

### **Minutes**

65. The Secretary of the VRC shall record all proceedings in writing, and the minutes will show the main points of deliberation stating the reasons for any decisions.

## **Determinations of the Vendor Review Committee**

### **Voting**

66. All determinations and recommendations of the VRC will be made based on a majority vote of the Members. The minimum quorum for considering a case shall be one more than half of the total members.

### **Determinations**

67. The VRC shall determine if, based on the Record, the Respondent engaged in Proscribed Practices in connection with a procurement action financed, administered or executed by UNDP. The VRC shall make its recommendations to the CPO based on its determinations and the applicable guidelines. The decision of the CPO shall be final.

### **Basis for determinations**

68. The VRC shall make determinations on the basis of a review of the Record received pursuant to the procedures herein, as well as any additional clarification or verification from interested parties.

### **Involvement in proscribed practices**

69. If the VRC determines, after its review of the Record, that there is sufficient basis to find that the Respondent was involved in actions or omissions that constitute Proscribed Practices, the VRC will issue a written report summarizing its determination and making its recommendation, which shall be submitted by the Chairperson to the CPO for its consideration in making a final decision.

### **Insufficient basis to determine involvement in proscribed practices**

70. If the VRC determines, after its review of the Record, that there is insufficient basis to find that the Respondent was involved in actions or omissions that constitute Proscribed Practices, the case shall be closed. The Secretary of the VRC shall make a record of the VRC's determination and promptly inform the Respondent and relevant UNDP Offices. A matter may only be re-opened when the VRC approves the Secretary's request based on new information available.