

## VENDOR REVIEW AND SANCTIONS

### 1. INTRODUCTION

- 1.1 In spending public resources for or in connection with its activities, UNFPA, a subsidiary organ of the United Nations, aims to meet the highest standards of integrity and competency, and demands the same from those who provide goods, works or services to UNFPA. UNFPA, therefore, will not accept goods, works or services from any person or entity that does not meet those high standards of integrity and competency.
- 1.2 Accordingly, [UNFPA Financial Regulation 15.2](#) stipulates four basic procurement principles, based *inter alia* on ethical considerations. In order to give effect to these procurement principles, a list of vendors ineligible for the award of United Nations business is maintained on the United Nations Global Marketplace (“[UNGM](#)”) portal (click [here](#)) and is available to all organizations of the United Nations. The purpose of this policy is to cover all aspects of vendor review and sanctions by UNFPA, including the imposition of sanctions on vendors that engaged in corrupt, fraudulent, collusive, coercive, obstructive or unethical practices, and the inclusion of such vendors in UNGM as vendors ineligible for United Nations business.

### 2. DEFINITIONS

For purposes of this administrative policy, the following definitions apply:

- 2.1 **Vendor:** An Offeror or a prospective, registered or actual supplier, contractor or provider of goods, services and/or works to UNFPA. Vendors include individuals, private or public companies, whether parent, holding, subsidiary, affiliate, consortium members, or partnership, a government agency or a non-governmental organization. Employees, officers, advisers or representatives of the Vendor will be considered agents for which the Vendor is responsible under these procedures.
- 2.2 **Sanction:** An administrative determination, including any necessary measures or rehabilitative requirements, made by the Chief Procurement Official (“[CPO](#)”) based on the recommendation of the Vendor Review Committee (“[VRC](#)”), intended to ensure compliance with UNFPA regulations, rules and procedures, applied by UNFPA as a result of demonstrated Vendor engagement in Proscribed Practices.
- 2.3 **Ineligibility List:** A list that aggregates information disclosed by UNFPA and other Agencies, Funds or Programs of the UN System, hosted by UNGM, updated by an Ineligibility List Administrator, and accessible to designated staff at UNFPA and other participating Agencies, which specifies the name, location, grounds for ineligibility as well as a start and end expiration dates for sanctions for each Vendor that has lost its eligible status. The Ineligibility List is separate and distinct from other

UN System approved lists, including but not limited to the Consolidated United Nations Security Council Sanctions List.

2.4 ***Proscribed Practices:*** Actions or omissions that may take place at any time during the procurement process, including contract execution or beyond:

- (a) A *corrupt practice* is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.
- (b) A *fraudulent practice* is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- (c) A *collusive practice* is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
- (d) A *coercive practice* is an act or omission that impairs or harms, or threatens to impair or harm, directly or indirectly, any party or the property of the party to improperly influence the actions of a party.
- (e) An *obstructive practice* is an act or omission intended to materially impede the exercise of contractual rights of audit, investigation and access to information, including destruction, falsification, alteration or concealment of evidence material to an investigation into allegations of fraud and corruption.
- (f) An *unethical practice* is conduct or behavior that is contrary to staff or supplier codes of conduct, such as those relating to conflict of interest, gifts and hospitality, post-employment provisions, abuse of authority and harassment.

2.5 ***Respondent:*** A Vendor subject to Sanction Procedures and named in a Notice of Administrative Action.

### 3. VENDOR REVIEW COMMITTEE

3.1 ***Purpose and Mandate.*** The Vendor Review Committee (VRC) is an internal technical administrative body established at UNFPA Headquarters. It is established by the CPO and will make recommendations to the CPO for his or her consideration in taking final Vendor Sanctions decisions.

3.2 ***Membership of the VRC.*** The CPO shall appoint: (a) three (3) VRC members, including one who shall be designated by the CPO as the VRC Chairperson; (b) one or more alternate VRC members to serve on the VRC if a VRC member is prevented from attending or recuses him or herself. All such appointments shall be without time limitation, until revoked by the CPO. VRC members will serve as needed, concurrently with their existing functions. The VRC may not include staff members of UNFPA's Legal Unit, Office of Audit and Investigation Services ("**OAIS**"), Evaluation Office or Ethics Office. VRC members shall sign a declaration of

impartiality for each case before the VRC, which shall form part of the record. In addition, the Chief, Procurement Services Branch (“PSB”), shall be an *ex officio* member of the VRC and shall not have the right to vote or take decisions on the VRC.

- 3.3 **VRC Secretary.** The CPO will appoint a person to serve as VRC Secretary.
- 3.4 **Responsibilities of the VRC.** The VRC shall make recommendations, based on the evidence, regarding Proscribed Practices by Vendors. Its responsibilities include:
- (a) Recommending Notices of Administrative Action (“NAA”) prepared by the Secretary of the VRC;
  - (b) Recommending specific sanctions or other corrective and rehabilitative measures to the CPO if evidence is deemed sufficient that a Vendor has engaged in any Proscribed Practice;
  - (c) Recommending to the CPO the rejection or acceptance of a request for interim suspension of a Vendor;
  - (d) Recommending to the CPO the acceptance or rejection of settlement offers presented by a Vendor;
  - (e) Requesting any additional information or advise it may deem necessary, including advice by the Legal Unit, Ethics Office, or information from OAIS (consistent with its operationally independent status, OAIS shall be free to agree to or to decline such a request);
  - (f) Recommending to the CPO the acceptance or rejection of Rehabilitation requests;
  - (g) Recommending to the CPO exceptional suspension of the effects of sanctions imposed by other UN Agencies if this would be in the best interests of UNFPA, either generally or in a specific procurement action;
  - (h) Recommending to the CPO the referral of a matter on a strictly confidential basis to other agencies in the UN System;
  - (i) Any other duties, consistent with its mandate, or as may be requested by the CPO.
- 3.5 **Responsibilities of the VRC Chairperson.** The VRC Chairperson shall be responsible for:
- (a) Convening and presiding over VRC meetings;
  - (b) Signing VRC recommendations on behalf of the VRC;
  - (c) Deciding on recusals of VRC members or other parties involved with the proceedings.
- 3.6 **Responsibilities of the VRC Secretary.** The VRC Secretary shall report to the VRC Chairperson and is responsible for:
- (a) Reviewing all submissions to the VRC;

- (b) Requesting additional information on submissions to the VRC;
- (c) Channeling all communications among all concerned parties and the VRC;
- (d) Drafting all notices, including the NAA, minutes and records;
- (e) Keeping the records of the VRC;
- (f) Presenting any requests for interim suspension, re-opening, exigency, exceptions, reinstatement, or settlement to the VRC;
- (g) Inform the Ineligibility List Administrator of new or amended UNFPA entries to the Ineligibility List;
- (h) 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 UNFPA's policies and procedures;
- (i) Answering any questions that other UNFPA units may have with regard to these procedures;
- (j) Performing other functions as may be approved by the Chairperson or the CPO.

#### 4. REPORTS OF PROSCRIBED PRACTICES TO OAIS; INVESTIGATION BY OAIS

4.1 **Definitions.** For purposes of this section 4, the following definitions apply:

- (a) **Investigation:** This term has the meaning assigned to it in the UNFPA Oversight Policy approved by the UNFPA Executive Board.
- (b) **Investigation Dossier:** The collection of evidence assembled during an investigation. The Investigation Dossier usually includes a report summarizing the investigation findings, listing the evidence gathered and submitting recommendations and documentary evidence.
- (c) **Wrongdoing:** This term has the meaning assigned to it in the UNFPA Oversight Policy approved by the UNFPA Executive Board.

4.2 **Reports of Proscribed Practices.** UNFPA staff members must report allegations of Wrongdoing to the Director, OAIS. This obligation shall be considered fulfilled: (a) by a report to OAIS; (b) by a report to the staff member's Manager. The Manager shall forward the report to the Director, OAIS, without delay. Individual independent contractors (such as a consultant) are expected to report Wrongdoing to the Director, OAIS, UNFPA, or to the applicable Manager.

4.3 OAIS may use other intake facilities at its discretion, including its internet based reporting facility at <http://web2.unfpa.org/help/hotline.cfm>.

4.4 A dossier submitted by a third party to UNFPA may be treated as an allegation of a Proscribed Practice, as follows:

- (a) If, in the opinion of the Director, OAIS, the third party dossier is supported by sufficient evidence and the Vendor was provided with a reasonable

opportunity to be heard, the Director, OAI, may endorse the third party dossier without taking further investigative action and transmit it as described in section 4.7, accompanied, as appropriate, with additional recommendations issued by the Director, OAI. (This course of action may, in particular, be an option in cases of dossiers issued by oversight or investigation entities of the United Nations system).

- (b) If, in the opinion of the Director, OAI, the third party dossier requires further investigative activity, including activity to ensure the Vendor is provided with a reasonable opportunity to be heard, the Director, OAI, shall conduct further investigative activities at his or her discretion (section 4.4 *et seq.*).

- 4.4. ***Conduct of Investigation.*** Any investigation is conducted under the authority of the Director, OAI. It may comprise two phases: a preliminary assessment phase and an investigation phase. In all instances, the Director, OAI, retains the prerogative to determine when circumstances warrant a preliminary assessment and/or an investigation phase.
- 4.5. The purpose of preliminary assessment is to: (a) record and establish the basic facts; (b) preserve or secure basic evidence, whether written or electronic (such as checks, invoices, written statements, or other relevant documents, records or data) that might otherwise be lost and that may be necessary for the determination as to whether an Investigation is justified; (c) identify any inconsistencies or outstanding questions; and (d) analyze the evidence in order to determine whether further investigative activities into the reported allegations of Proscribed Practices are justified.
- 4.6. The purpose of the investigation phase is to seek and collect evidence capable of ascertaining facts to permit a determination whether or not a Proscribed Practice occurred. The Director, OAI, may decide that OAI shall conduct the investigation, that OAI will cooperate with an outside investigation entity, and/or that the investigation or any part thereof shall be contracted out to an appropriate outside investigation entity.
- 4.7. ***Determination by Director, OAI.*** Where, in the view of the Director, OAI, the information obtained during preliminary assessment or investigation (i) does not give rise to a reasonable indication that a Proscribed Practice occurred, or (ii) would not otherwise merit the conduct of an investigation, the Director, OAI, may close the case and inform the complainant accordingly. Where an investigation has been completed and, in the view of the Director, OAI, the allegations have been substantiated, he/she will issue an Investigation Dossier and transmit it to the UNFPA Legal Advisor and may copy the Executive Director.

## 5. NOTICE OF ADMINISTRATIVE ACTION/CASE CLOSURE

- 5.1 ***Instructions by VRC to Secretary.*** The VRC will review the Investigation Dossier and determine whether it wishes to recommend to the CPO (i) the initiation of vendor

review proceedings or (ii) the closure of the matter. In the first case, the VRC will instruct the Secretary to prepare a Notice of Administrative Action (5.1.1 below); in the latter case, the VRC will instruct the Secretary to prepare a Memorandum of Case Closure (5.1.2 below).

5.1.1 **Notice of Administrative Action.** Where the VRC instructed the Secretary to prepare a NAA, he or she shall prepare a draft NAA and present it to the VRC for its consideration. The NAA shall: (a) identify each individual or entity that may be subject to Sanctions; (b) identify the alleged Proscribed Practices; (c) summarize relevant facts that form the basis for the allegations; (d) 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 NAA has been admitted in full; (e) state that the VRC may recommend that the CPO impose Sanctions; (f) state that UNFPA may request, after Sanctions have been imposed, that the Vendor be included in the Ineligibility List; (g) specify any other information that the VRC Secretary finds relevant to the allegations; and (h) state that any information or data provided by UNFPA is confidential and only intended for the purposes of these proceedings, that VRC work product is privileged, and that UNFPA is not required to provide further information or data as such is protected from disclosure and as part of UNFPA archives under its privileges and immunities. The VRC shall be free to amend the draft NAA as it deems appropriate.

5.1.2 **Memorandum of Case Closure.** Where the VRC instructed the Secretary to prepare a Memorandum of Case Closure, the Secretary shall prepare a draft and present it to the VRC for its consideration. The Memorandum shall state the reasons why the case is closed. The VRC shall be free to amend the draft Memorandum of Case Closure as it deems appropriate.

5.2 **Decision by CPO.** The VRC shall issue a recommendation to the CPO to approve the final draft NAA or Memorandum of Case Closure. The CPO has discretion to approve or dismiss the NAA or the Memorandum of Case Closure, or to request that amendments be made to either.

- (a) If the CPO approves the NAA, the vendor sanctions proceedings shall proceed.
- (b) If the CPO approves the Memorandum of Case Closure, the Memorandum will be filed and the case closed.
- (c) If the CPO dismisses the NAA, the VRC Secretary will include that decision in the file and the case will be closed.
- (d) If the CPO dismisses the Memorandum of Case Closure, the Secretary shall proceed in accordance with the CPO's instructions, including, as applicable, by preparing a NAA.

## 6. INTERIM SUSPENSION

- 6.1 When it is deemed necessary and timely to protect the best interests of UNFPA, the CPO may, during the investigation, upon issuance of the NAA or at any other stage in the proceedings set forth herein, suspend the Vendor from participating in procurement actions for a specified period of time. If the Vendor is already taking part in a procurement action, the suspension shall specify whether or not the Vendor may be considered further in the instant procurement action. Interim suspension is separate and different from suspension, and will not be deemed a sanction for the purposes of these procedures.

## 7. START OF VENDOR REVIEW

- 7.1 *Issuance of NAA.* Upon approval of the NAA by the CPO, the VRC Secretary shall issue the NAA and cause a copy of the NAA and all attachments, if any, to be delivered to each Respondent by courier service or other means that will provide evidence of the delivery.

## 8. SUBMISSIONS TO THE VRC

- 8.1 The submissions to the VRC, before it makes a recommendation to the CPO, shall consist of the following: (i) the NAAs; (ii) a Response by the Respondent, where provided; (iii) Exceptionally, and when requested by the VRC, a Reply by the Chief, PSB; (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.
- 8.2 *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 VRC Secretary may inform the Respondent if the VRC needs further information in order to consider and deliberate the matter fully.
- 8.3 *Additional Information from OAIS.* The Chairperson may instruct the VRC Secretary to transmit a copy the Respondent's Response to the Director, OAIS, and request OAIS' comments in writing. The Chairperson may also request that OAIS undertake further review on facts raised by the Respondent, as needed. OAIS shall be free at its discretion, consistent with its operationally independent status, to provide the response or to undertake further review.
- 8.4 *PSB's Reply.* If the VRC considers that further information is needed, it will submit a copy to the Chief, PSB. The Chief, PSB, 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).

- 8.5 ***Respondent's Sur-reply.*** The Respondent will have fifteen (15) days after receipt of the PSB's 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 VRC Secretary. 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.
- 8.6 ***Additional Documentation and Information.*** If new information and documentation becomes available to either PSB or the Respondent after the submission of their respective written submissions and before the conclusion of the Vendor review process, 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 for the VRC's recommendation. The VRC may, at its discretion, request the other party to respond to the additional materials, as needed.
- 8.7 ***Language.*** 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.
- 8.8 ***Communications.*** Communications related to the Vendor review shall be sent by mail with delivery confirmation 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 NAAs and successive submissions. If a Respondent refuses delivery of the NAA, 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.
- 8.9 ***Extensions of Time.*** 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 the process, grant reasonable extensions of any deadlines.

- 8.10 ***Computation of deadlines.*** 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 UNFPA. If the last day of any period falls on a day in which UNFPA is not officially open for business, the term shall run until the end of the next day on which UNFPA is officially open.

## 9. OTHER PROCEDURES

- 9.1 ***Failure to submit a timely Response.*** 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 sanctions have been imposed.
- 9.2 ***Admissions.*** 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.
- 9.3 ***Mitigating Circumstances.*** 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.
- 9.4 ***Aggravating Circumstances.*** The Secretary of the VRC or the Chief, PSB, may include in their submissions information on aggravating circumstances or information concerning previous sanctions imposed by UNFPA or any other Agency in the UN System.

## 10. SETTLEMENT

- 10.1 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 NAA. The VRC will make a recommendation to the CPO, who will approve or reject the settlement offer at his or her sole discretion.

## 11. MATERIALS

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- 11.1 ***Distribution of Submissions.*** 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 United Nations, including UNFPA. The Respondent does not have the right to request any other information or documentation in UNFPA's possession. If any information is deemed privileged or otherwise confidential or if a person who provided UNFPA 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 VRC Secretary may redact in order to secure the informant's anonymity and/or protect any other information it deems privileged or confidential.
- 11.2 ***Distribution of Submissions to Others.*** The VRC Chairman may direct the Secretary to provide materials submitted to the VRC, in accordance with confidentiality principles set out in section 12.5, to:
- (a) Other Respondents in other vendor review proceedings involving related matters;
  - (b) Other offices or units within UNFPA, as necessary;
  - (c) Other affected agencies (section 17);
  - (d) Other Vendors who may be involved but are not named as Respondents; and
  - (e) Others deemed necessary by the VRC.
- 11.3 In every case, the VRC Secretary will indicate that the information or data provided to a third party is confidential and for the purposes for which it was provided, and UNFPA shall not be required to provide further information or data as such is protected from disclosure as part of the archives of UNFPA under its privileges and immunities.
- 11.4 ***Exculpatory Materials.*** When instructed by the VRC Chairperson, the VRC Secretary shall provide to the Respondent any materials in the VRC's possession that may reasonably be considered to exculpate the Respondent.
- 11.5 ***Withholding of Sensitive Materials.*** The VRC Chairperson may instruct the VRC Secretary 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.
- 11.6 ***Privileged Materials.*** Attorney-client communications and attorney work product of any party shall be exempt from disclosure. The VRC may also determine other

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materials to be confidential pursuant to the UNFPA's privileges and immunities, or otherwise in the best interests of the UNFPA.

## 12. ADMINISTRATIVE PROCEEDINGS

- 12.1 **Record.** In making its recommendations to the CPO, the VRC shall consider a written record consisting of all submissions pursuant to section 8, 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, and/or UNFPA's host country, including but not limited to vital records, immigration records, real estate records, and criminal records.
- 12.2 **Information and Documentation.** 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 UNFPA under its privileges and immunities.
- 12.3 **No Hearings.** 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.
- 12.4 **Closed Deliberations.** 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.
- 12.5 **Confidentiality.** The records of the proceedings shall be private and confidential. The VRC Secretary 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 UNFPA 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 UNFPA under its privileges and immunities.
- 12.6 **Minutes.** The VRC Secretary shall record all proceedings in writing, and the minutes will show the main points of deliberation stating the reasons for any decisions.

## 13. DETERMINATIONS OF THE VENDOR REVIEW COMMITTEE; FINAL DECISION BY CPO

- 13.1 **Voting.** All determinations and recommendations of the VRC will be made based on a majority vote of the VRC members.
- 13.2 **Determinations.** The VRC shall determine if, based on the evidence contained in the record, the Respondent engaged in Proscribed Practices in connection with a procurement action financed, administered or executed by UNFPA. The VRC shall make its recommendations to the CPO based on its determinations and the applicable procedures and guidelines.
- 13.3 **Determination of Involvement in Proscribed Practices.** If the VRC determines that there is sufficient basis to find that the Respondent was involved in Proscribed Practices, the VRC will issue a written report summarizing its determination and stating its recommendation(s) to the CPO.
- 13.4 **Insufficient Basis to Determine Involvement in Proscribed Practices.** If the VRC determines that there is insufficient basis to find that the Respondent was involved in Proscribed Practices, the VRC will issue a brief, written report summarizing its determination and stating a recommendation to the CPO that the case be closed.
- 13.5 **Decision by CPO.** The CPO will take the final decision, which shall take effect immediately.
- (a) The Respondent shall be notified in writing of the decision, including any sanctions imposed and the procedures to seek rehabilitation, if applicable.
  - (b) The UNFPA Executive Director will be informed of the CPO's final decision.

## 14. SANCTIONS

- 14.1 **VRC Recommendation of Sanction(s).** If the VRC determines that the evidence shows that the Vendor engaged in Proscribed Practices in connection with UNFPA's procurement actions, the VRC shall include in its recommendation to the CPO a sanction, or a combination of sanctions, proportional to the findings. Sanctions will be imposed through the CPO's written decision.
- 14.2 **Possible Sanctions.** The VRC may recommend, and the CPO may impose any of the following sanctions or a combination of them. 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 UNFPA and the Respondent.
- (a) **Censure:** A letter of reprimand of the Respondent's conduct. Censure does not affect the Respondent's eligibility, but its existence will be an aggravating factor for imposing sanctions in any future proceedings;

- (b) ***Ineligibility/Debarment:*** A formal declaration that a Respondent has become ineligible for a period of time to (a) be awarded and/or to partake in contracts financed, administered or executed by UNFPA; (b) conduct new business with UNFPA as agent or representative of other Vendors; (c) partake in having discussions with UNFPA regarding new contracts. Exceptionally, the VRC may recommend that the Respondent's debarment be permanent;
- (c) ***Other Sanctions:*** The VRC may recommend other sanctions that it finds appropriate to the circumstances at hand, including reimbursement or subjecting future contracts to special conditions.

## 15. DISCLOSURES

- 15.1 ***Disclosure of decisions.*** If the CPO, based on the recommendation of the VRC, imposes a Sanction on a Respondent, information on the identity of the sanctioned party and the sanctions imposed will be shared with the UN System through the procedure detailed in section 18. UNFPA may also, at its discretion, share such information with other international organizations, host countries, and any other parties deemed appropriate in accordance with its procedures.

## 16. REFERRAL TO GOVERNMENT AUTHORITIES

- 16.1 Subject to UNFPA's disclosure policies, its privileges and immunities, and procedures, the VRC may, in consultation with the Legal Unit, recommend to the CPO that a matter be referred, on a confidential basis, to appropriate national authorities for consideration of criminal investigations and prosecution in appropriate cases.

## 17. DISCLOSURE TO OTHER POSSIBLY AFFECTED INTERNATIONAL ORGANIZATIONS

- 17.1 If, during the course UNFPA proceedings, information comes to light regarding proscribed practices in connection with another International/Regional Organization that may have been affected, the VRC may recommend to the CPO that he or she shares information and documentation, on a confidential basis, with other International and/or Regional Organizations by means of an appropriate pre-authorized process and in accordance with its privileges and immunities.

## 18. COMMON ACTIONS

- 18.1 The Ineligibility List is a central roster, hosted and maintained confidentially by UNGM as a protected electronic document that aggregates information provided by each participating Agency, including UNFPA. 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.

18.2 **Entries.** After the Respondent has been notified of the CPO's final decision, the Secretary of the VRC will submit a written summary of the decision, to the Ineligibility List Administrator, who has administrator privileges over the Ineligibility List. A vendor included in the Ineligibility List shall be considered an ineligible vendor ("Ineligible Vendor").

18.2.1 The Secretary's summary shall indicate, at a minimum, the name of UNFPA as the affected Agency, the date of the CPO's decision, the name, nationality, address and contact information of the Ineligible Vendor, the type and duration of the sanction or sanctions imposed, and the type proscribed practice that resulted in the imposing of the sanction.

18.2.2 The Ineligibility List Administrator will notify the Ineligible Vendor within five (5) days of its inclusion into the Ineligibility List and the specific information included in the entry. The notice will include instructions on how to formulate a request to correct errors in the entry.

18.2.3 UNFPA may, at its sole discretion, make available, through a confidential inter-agency network and to designated representatives of each participating Agency: the full description of the allegations made against the vendor, the process followed by the VRC, the evidence considered, the findings of the VRC and the reasoning underlining the recommendations.

### 18.3 **Correction of Errors.**

18.3.1 If upon receiving the notice the Ineligible Vendor believes, in good faith, that the entry as presented in its Notice of Inclusion in the Ineligibility List contains errors regarding identity, type or duration of the sanction, the Ineligible Vendor must respond to the Secretary of the VRC in writing within five (5) days, specifying the errors in the entry and providing supporting documentation. If the sanctioned Vendor mistakenly informs the Ineligibility List Administrator directly, he or she shall transmit that request to the Secretary of the UNFPA VRC, with copy to the Vendor.

18.3.2 The Ineligible Vendor may not present documentation or make arguments that could be construed as a *de novo* review of the merits of the CPO's determination. The VRC Secretary will confirm or amend the information provided within five (5) days, and the Ineligible Vendor will be notified in writing. The Secretary of the VRC will also inform the Ineligibility List Administrator in case the Ineligibility List needs to be amended.

18.4 **Effects of Inclusion in Ineligibility List.** 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 the VRCs or similar bodies in all

participating agencies of any inclusions or deletions to the Ineligibility List within two (2) days.

## 19. MONITORING

- 19.1 ***Non-Participation of Ineligible Vendors.*** UNFPA will periodically verify that no new contracts have been awarded to Ineligible Vendors by the UNFPA, and that they are not actively participating in the UNFPA's procurement processes.
- 19.2 ***Corrective measures.*** When the VRC's determination or settlement agreement so requires, the Secretary of the VRC will request the Vendors who have settled, to submit periodic reports on the status and implementation of any corrective actions.
- 19.3 The Secretary of the VRC shall periodically inform the VRC on monitoring activities.

## 20. EXIGENCY

- 20.1 ***Waiver.*** When the Chief, PSB, considers that circumstances warrant the participation of an Ineligible Vendor in a UNFPA procurement process, the Chief PSB may request a waiver that temporarily suspends the effects of the sanctions imposed by UNFPA or another Agency. The request shall summarize the reasons behind the need for that particular vendor's participation, and will be presented in writing to the VRC through the Secretary. The VRC shall submit a recommendation to the CPO to approve or reject the request for a waiver.
- 20.2 ***Effects of Waiver.*** The waiver by the CPO makes an Ineligible Vendor eligible for an award of contract by UNFPA, exceptionally and on a one-time basis. The VRC Secretary will notify the Chief, PSB, and the Ineligible Vendor of the CPO's decision.

## 21. EXCEPTIONS

- 21.1 ***Exceptions to Common Actions.*** Pursuant to the demands of its own mandate, UNFPA may exceptionally opt out of participating in common actions with regards to specific Ineligible Vendors.
- 21.2 ***Request for Exception.*** If the Chief, PSB, considers that it is in the best interest of UNFPA that an Ineligible Vendor included in the Ineligibility List by another Agency is made exceptionally eligible, he or she may request an exception from the VRC. The Chief, PSB, will present the reasons for the request in writing to the VRC through the Secretary. The VRC shall submit a recommendation to the CPO to approve or reject the request for an exception.
- 21.3 ***Grounds for Granting Exception.***

- (a) The VRC may recommend that the CPO grant the request on a case by case basis, when the Chief, PSB, demonstrates that UNFPA has a compelling interest in using the Ineligible Vendor, including but not limited to the Ineligible Vendor being the sole provider of proprietary technology; the sole provider of life-saving medicine or treatment; or the existence of monopoly conditions in the country where the procurement action is to take place.
- (b) The Secretary of the VRC will promptly notify the Chief, PSB, and the sanctioned vendor of the CPO's decision. The notification will indicate that the exception is only applicable to the UNFPA's specific procurement action that prompted the request.

21.4 ***Effects of Exception.*** An exception makes a Vendor eligible on an exceptional basis to participate in the specific procurement action that originated the Chief, PSB's request. The decision made by the CPO will be immediately notified to the UNGM for appropriate action.

## 22. REHABILITATION

- 22.1 ***Expiration of Entries.*** Upon completion of the Sanction period, the Ineligibility List Administrator shall add notations to particular entries indicating a Change in Status, in strict observance with the Data Protection provisions of UNGM. This amendment to the Ineligibility List shall be promptly informed in accordance with UNGM procedures to all agencies. Indicating a change of status does not constitute, in and of itself, the rehabilitation of the Ineligible Vendor.
- 22.2 ***Rehabilitation upon Expiration of Sanctions.*** An Ineligible Vendor wishing to restore its business relationship with UNFPA may request to have his, her or its eligible status restored by the CPO when the sanctions imposed and corresponding entry to the Ineligibility List have expired.
- 22.3 ***Rehabilitation prior to Expiration of Sanctions.*** Ineligible Vendors may request rehabilitation when normally at least half of the sanctions term has expired, 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.
- 22.4 ***Grounds for Rehabilitation.*** The request for rehabilitation must be submitted in writing to the Secretary of the VRC and must be accompanied by supporting documentation. The Secretary of the VRC will submit the request to the VRC within five (5) days. The VRC will recommend that the CPO accept or reject the request for rehabilitation within thirty (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 effects of corrective measures, the deterrent effects resulting from the sanctions imposed, and must show that re-establishing its eligibility will be a sound business decision for UNFPA.

22.5 *Effects or Rehabilitation.* 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 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 subsist, the vendor will regain its status as an eligible vendor.