**Handling of Procurement Complaints** Structure Element - Description​

1. It is important to distinguish between general enquiries, bidders debriefings and bidders complaints.

1. General inquiries regarding UNDP procurement policies and procedures, are dealt by the Procurement Unit. These are considered clarifications, many of which are administrative or technical in nature.

1. After the notification of award, a company may wish to ascertain the grounds on which its proposal was not selected; this is permitted under UNDP procurement guidelines. Offerors making such a request should be accommodated by UNDP through a debriefing. Further information can be obtained in the chapter entitled *Award of Contract*, in the section on Debriefing of Unsuccessful Offerors.

1. Holding a debriefing meeting is advantageous to both UNDP and the unsuccessful offeror in the following manner: (a) the offeror learns about its weaknesses and therefore becomes empowered to improve its proposals in future opportunities; (b) the debriefing contributes to building the trust of the business community in UNDP; and (c) it is an opportunity for UNDP to clarify its decision in a cordial manner, thus avoiding potential escalation of bidder concerns into formal complains.

1. It is recommended that the debriefing session be conducted by at least two UNDP staff members, one of them typically the Procurement Officer that administered and/or facilitated the bid evaluation process. Certain considerations should be kept in mind in conducting the debriefing session, including the following:
2. The scope of the debriefing should be limited only to the strengths and weaknesses of the proposal submitted by the bidder who requested the debriefing;
3. Neither the comparative ratings achieved by the bidders nor other information related to the proposal of other bidders should be disclosed;
4. The tone of the UNDP staff conducting the debriefing should, in as much as possible, be calm, objective, constructive and respectful of the other party. Avoid further criticizing the proposal under discussion. Allow the other party to speak as much as necessary, and always take into careful consideration the sensitivities of an unsuccessful bidder.
5. Complaints shall be handled in a timely, consistent and accurate manner by UNDP staff, ensuring transparency, fairness, and accountability. The following section covers the handling of procurement complaints.

1. Any offeror or contractor who feels that he or she has been aggrieved in connection with the solicitation or award of a contract by a UNDP office may file a protest with the Business Unit (i.e., RR or Head of the Business Unit).

1. Procurement protest is defined in this context as any allegations made by an individual or entity with respect to failure of UNDP or any of UNDP staff to comply with relevant procurement procedures and uphold the basic principles and standards of integrity, transparency and fairness expected in the public procurement context.

1. To be completed, the protest must contain the following information:
2. The protestor’s name, address, telephone number and fax number;
3. The solicitation or contract number, the name of contracting office;
4. A detailed statement of all factual and legal grounds for the protest and an explanation of how the protester was wronged;
5. Copies of relevant documents supporting protester’s statement;
6. A statement as to the form of relief;
7. All information establishing that the protestor is an interested party for the purpose of filing a protest; and
8. All information establishing the timeliness of the protest.

|  |
| --- |
| 1. Once received, the Unit must:
2. Acknowledge receipt within two working days, indicating that UNDP is reviewing the issues raised;
3. Submit copy of the protest letter and UNDP’s acknowledgement to the Director of PSO, for purposes of entering the case in the Corporate Complain Log;
4. Record the complaint in the Country Office/Business Unit Complain Log;
5. Inform the RR and Head of Business Units of the receipt of the protest, who should then nominate the responsible focal person who will be able to conduct the due diligences and investigation in the most neutral and objective manner;
6. Initiate an investigation of the allegations;
7. If necessary, seek an advisory opinion from PSO, Legal, or RCPO;
8. Prepare an Investigation Report and include suggested remedies (if required);
9. Document the case results on a memo to file;
10. The RR or Head of the Business Unit will submit a letter that responds to the issues raised by the protestor and addresses any other issues which, even if not raised by the protestor, may have been identified by the Business Unit as being relevant to the fairness of the procurement process. It is important that the communication comes from the RR or Head of the Unit as the highest delegated authority.
 |

**Escalation of Protest**

1. The RR or the Head of Business Unit must address in the first instance any complaint or protest from an unsuccessful offeror, with a copy submitted to the Director of PSO. The Business Unit should also advise in its response that should the protestor not be satisfied, the complaint, along with the response, should be forwarded to the Director of PSO, who will undertake a review and make a decision which is final and binding on all concerned. Furthermore, at any time, the RR/RC may contact the Office of Audit and Investigation (OAI).

1. In case the Director of PSO identifies potential misconduct in the handling of procurement, the case will be referred to OAI for further investigation.

1. Complaints shall be received in writing. In the case that they are received by other means, the offeror will be requested to submit them in writing, in accordance with point 5.0 on inputs.

1. In review, there may be up to three levels of review for a complaint:

1st Level – Country Office: in which a letter by the RR or Heads of the Unit is submitted to the offeror;

2nd Level (if requested) – PSO: in which an offeror is not satisfied with the provided response and seeks PSO intervention;

3rd Level (if applicable) – (OAI): in which OAI is contacted directly by the supplier, by the Country Office or by PSO, at any time.

**Protest Prior to Award**

1. When a protest is filed prior to award, a contract shall not be awarded unless the following conditions are established:
2. It has been determined that due diligence was conducted at the Country Office level, leading to the conclusion that there is no solid ground for the protest;
3. It has been determined by the RR or Head of the Business Unit that the goods, works or services must proceed as a result of genuine exigency of service, or that a prompt award would be in the best interest of UNDP.
4. Where the above conditions exist and are properly documented, the RR or Head of the Business Unit will award the contract and simultaneously provide written correspondence to the offeror.

1. In case the above conditions do not exist, the contract should not be awarded until the protest has been closed.

**Protest After Award**

1. When a protest is filed after award, the RR or Head of the Business Unit shall immediately initiate investigation and conduct due diligences at the Country Office level to determine whether or not there are valid grounds for the protest. These findings and the assessment of the impact of the contract suspension will be the basis for determining whether contract suspension is necessary until the entire process has been concluded, or whether it is best to continue with the contract execution while the review process is ongoing.

**Complaint Log**

|  |
| --- |
| 1. The Country Office or relevant Business Unit will maintain a Complaint Log recording all complaints made during the calendar year. A copy of the Complaint Log shall be submitted every six months to the Director of PSO with copy to the Regional CPO (in the absence of the Regional CPO, it will be copied to ACP). At the same time, PSO will maintain a Corporate Complaint Log for any complaints escalated to HQ.
 |

1. The Complaint Log will include the following information as a minimum:
2. Complaint Reference; to be provided in chronological order (i.e., 1,2,3…)
3. Project Reference/Case Reference
4. Protesting company/individual
5. Complaint start/date of reception
6. Complaint end/date of termination
7. Main findings

**Complaints on Legal Grounds**

1. Any claim which may not settle amicably shall be immediately referred to LSO.

**Structure Element - Inputs**

**​ Required Information**

1. To be completed, the protest must contain the following information:
2. The protestor’s name, address, telephone number and fax number;
3. The solicitation or contract number, name of contracting office and the name of the procurement officer in question;
4. A detailed statement of all factual and legal grounds for protests, and an explanation of how the protester was wronged;
5. Copies of relevant documents supporting protester’s statement;
6. A statement as to the form of relief;
7. All information establishing that the protestor is an interested party for the purpose of filing a protest; and
8. All information establishing the timeliness of the protest.

**Roles and Responsibilities**

Structure Element - Roles & Responsibilities

​

1. RR or Head of the Unit - Upon receipt of a written protest, responses must solely be prepared and executed by the RR or Head of the Business Unit. Any protests served upon UNDP staff must immediately be referred to the RR or Head of the Business Unit without further discussion or communication with the protestor. Protests served by Permanent Missions to HQ must be referred to PSO.

1. Scribe – focal person nominated by the RR or Head of the Unit Responsible for the maintenance and accuracy of the Complaint Log

**Lessons**

Lessons

​

1. When handling complaints, staff must not:
2. Enter into discussions with bidders regarding the complaint or communicate any opinion (except to acknowledge receipt of the complaint);
3. Provide bidders with details on the evaluation while the process is going on;
4. Make available or disclose UNDP correspondence or documents related to the evaluation process;
5. Discuss anything other than the complainant’s own bid after notification of contract award.