

**Guidance Note 3/2023  
(GN 3/23)**



MINISTRY OF FINANCE AND THE PUBLIC SERVICE

**OFFICE OF PUBLIC PROCUREMENT POLICY**

**Public Procurement Committee  
Guidance Note**

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This guidance note describes the principles and practices related to the establishment and operations of Public Procurement Committees.

## Contents

Interpretation.....	3
Context.....	3
Scope.....	3
The Law .....	3
Appointment of Procurement Committees: .....	3
Term of Appointment .....	5
Mandate of the Procurement Committee .....	5
Meetings and conduct of the Procurement Committee.....	8

Interpretation- *In this Guidance Note, all words are given the meaning imputed by Section 2 of The Public Procurement Act 2015 (as amended) herein referred to as “The Act”.*

Context- To strengthen oversight of public procurement, improve public financial management, and minimize the risk and incidence of corruption, procurement committees provide critical checks and balances in respect of contract award decisions that are to be made by the procuring entity.

For present purposes, “**oversight**” is the term broadly used to provide a net of safety, to ensure that procuring entities make the best possible procurement decisions in the circumstances, thereby minimizing risk and loss of public funds.

Scope: This guidance note describes principles and practices related to the establishment and operations of Procurement Committees.

The Law: Section 21 of the Act mandates the head of a procuring entity to establish a procurement committee to review procurement proceedings for that procuring entity, and the operations of such committees must accord with administrative guidance issued by the Office of Public Procurement Policy.

Section 22 of the Act provides that the functions of the procurement committee are to:

- (a) review and make recommendations to the head of the procuring entity (HPE) with respect to the award of procurement contracts that the head of the procuring entity requires the procurement committee to review;
- (b) review evaluation reports on bids with respect to each award of procurement contracts referred to in paragraph (a); and
- (c) maintain proper records of the proceedings of the committee, including records of the recommendations of the committee and the reasons for those recommendations.

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## **1. Appointment of Procurement Committees:**

1.1 The procurement committee must be appointed by the HPE through any written means of communication, including e-mail, letter or other similar instrument, and any such written communication must set out the: -

- i. Term (in years) of the member’s appointment- which may not exceed three (3) years;
- ii. Policies and procedures that govern the operations of the procurement committee;
- iii. Approximate frequency of meetings;
- iv. Objectives of the committee;
- v. Composition, membership, and quorum;
- vi. Scope of authority of the committee; and
- vii. Functions and responsibilities.

- 1.2 In considering members for appointment, the HPE should ensure that members: -
- i. Successfully complete the Procurement Committee Training Course provided by the Office of Public Procurement Policy;
  - ii. Possess competence in critical analysis, strategic planning and problem-solving, and be exposed to knowledge areas such as: public procurement, law, finance, accounting, corporate planning, and any other expertise specific to your entity's core business;
  - iii. Should be of sound character and good reputation;
  - iv. Should be competent to undertake the required duties in a politically neutral manner; and
  - v. Declare by any means prescribed by the head of procuring entity, whether they have any conflict of interest that will impair their ability to impartially assess any submission placed before them.
- 1.3 A procurement committee **must** comprise no fewer than five (5) officers including the following persons:
- i. Chairperson- with experience in the public service and with knowledge in public procurement.
  - ii. Public Officers- with institutional experience and knowledge of public procurement operations who have successfully completed the Procurement Committee Training Course provided by the Office of Public Procurement Policy.
  - iii. Senior Procurement Personnel - who will **not be a voting member** and will be responsible for piloting submissions for the approval of the committee.
  - iv. Secretary- **who will not be a voting member** and is responsible for maintaining the records of all committee proceedings, whether in person or via electronic or in written formats.
- 1.4 The HPE **must not** appoint to the procurement committee, any of the following persons:
- i. Any member of staff of the procuring entity's Internal Audit department;
  - ii. In the case of Municipal Corporations, any Councillor serving in that Municipal Corporation;
  - iii. In the case of public bodies or agencies, any member of that entity's board;
  - iv. Him or herself; nor
  - v. Public procurement personnel at any level within the Procuring Entity as a voting member.
- 1.5 The HPE may identify a pool of potential members of the PC to enable seamless appointment of new members at the end of each term. Each officer included in the pool should successfully complete the Procurement Committee Training Course provided by the Office of Public Procurement Policy.

## **2. Term of Appointment**

- 2.1 Subject to paragraph 2.2 herein, appointed members will serve for **one (1)** term not exceeding three (3) years as stated in the notice of appointment issued pursuant to paragraph 1.1 herein, unless the member's appointment is terminated, or the member resigns.
- 2.2 Upon the completion of the term of appointment pursuant to section 1.1, a member must not be reappointed for a consecutive term without the elapse of one (1) year between the expiration of the previous term and the appointment for the new term.
- 2.3 A member may resign at any time, by giving one (1) month written notice addressed to the HPE and Procurement Committee Chairperson.
- 2.4 A member's appointment may be terminated by the HPE if his/her performance or conduct is deemed to be unacceptable or if the member becomes of unsound mind or permanently unable to perform his functions by reason of ill-health or any other reason that the HPE may deem to be just and credible.
- 2.5 For the purposes of paragraph 2.4 herein, unacceptable conduct includes:
- i. The member's failure to fulfil the mandate of the Procurement Committee as set out in legislation;
  - ii. The member's failure to declare a conflict of interest;
  - iii. The member's absence from three (3) consecutive meetings of the committee without providing due notice to the Chairman;
  - iv. Conduct which in the opinion of the HPE is *reasonably* considered prejudicial to the interest of the committee or the entity; and
  - v. Conviction of an offense involving fraud or dishonesty.

## **3. Mandate of the Procurement Committee**

- 3.1 Within the threshold set by the HPE, the Procurement Committee is mandated to review recommendations for the award of procurement contracts to ensure that procurement proceedings are compliant with applicable laws and policies governing public procurement, public financial management, and corruption control and prevention.
- 3.2 In the conduct of its duties, the Procurement Committee is guided by the principles that underlies the Government of Jamaica's public procurement system, and in particular the Committee is guided by:

Principles	Expected Conduct
Transparency	<ul style="list-style-type: none"> <li>- All decisions are recorded and records of procurement proceedings are appropriately maintained, accessible and easily understood.</li> <li>- Reasons for decisions are clearly articulated, objective, coherent and lawful.</li> <li>- No characteristic or attribute of a bidder influences the committee's decision unless provided for in the tender documents or in the regulations.</li> </ul>
Competition	<ul style="list-style-type: none"> <li>- Ensure justifications for limiting or restricting competition are adequate and in alignment with the regulations. Where justifications are deemed inadequate, reasons are documented.</li> <li>- The Committee encourages procedures, systems and initiatives aimed at increasing the attractiveness of the procuring entity's business to suppliers.</li> <li>- Given the resources that suppliers commit to participating in public procurement proceedings all decisions must be made promptly and without delay. <i>(In the event a submission is not recommended it will be forwarded to the HPE without delay for final decision.)</i></li> </ul>
Equal Treatment	<ul style="list-style-type: none"> <li>- All decisions are made without discrimination; that is, no extraneous or irrelevant consideration should operate to eliminate any bid from consideration for contract award.</li> <li>- All similarly circumstanced suppliers are treated in the same manner, and different situations are treated differently, unless there is objective justification to do otherwise.</li> </ul>
Proportionality	<ul style="list-style-type: none"> <li>- The committee's procedures are fit for purpose and do not go beyond what is reasonable and necessary to achieve the procuring entity's goals.</li> <li>- The committee supports and encourages procedures, systems and initiatives aimed at simplifying the entity's procurement practices</li> <li>- In its decision making, the committee considers the subject, size, complexity, sustainability and technical requirements of the procurement</li> </ul>

3.3 In reviewing each recommendation placed before it, and in view of the expected conduct of the Procurement Committee, the Committee must enquire into: -

3.4.1. Any evidence of mis-procurement, such as the Procuring Entity's:

- i. Failure to adhere to procedures set out in the procurement law and the standard bidding documents;
- ii. Choice to restrict the level of competition in a manner that cannot be supported having regard to the results of the market research and analysis performed prior to instituting procurement proceedings;
- iii. Deployment of a method of procurement that cannot be supported as no reasonable justification meeting the legal grounds for restricting competition has been identified;
- iv. Inclusion of vague, ambiguous, incomplete or otherwise unclear acquisition requirements;
- v. Inclusion of specifications and evaluation criteria that are discriminatory or otherwise objectively unjustifiable;
- vi. Failure to disclose prior to the deadline for submission of bids, all criteria for bid evaluation and other material conditions of the procurement; and
- vii. Attempt to engage in unfair or illegal practice such as splintering.

3.4.2. Any evidence of poor or faulty decision making such as the Procuring Entity's:

- i. Rejection of a bid that should have been considered;
- ii. Consideration of a bid that should have been rejected as non-responsive;
- iii. Failure to properly apply the criteria for evaluation that were set out in the solicitation documents;
- iv. Deviation in the evaluation stage, from prescribed requirements which may have a material impact on the outcome of the bids; and
- v. Evidence that requests for clarification submitted by bidders were not addressed, not adequately addressed nor addressed in reasonable time to enable the bidder to consider the clarified information in its bid.

3.4.3. Reasons for the consideration or acceptance of bids that are abnormally low or high, in comparison to the pre-tender estimate, in particular where: -

- i. The deviation cannot be supported as doing so would provide a real risk to achieving value for money; and
- ii. The pre-tender estimate relied on was defective such that the price quoted by the successful bidder is demonstrably advantageous to the procuring entity.

3.4.5 Reasons for lack of competition or the selection of a particular supplier for a procurement opportunity.

3.4.6 For the avoidance of doubt, the Procurement Committee **must not** enquire into the:

- i. Source of funding for the procurement opportunity;
- ii. Specifications of the subject matter of the procurement unless to satisfy its enquiry *only* into those matters set out in paragraph 3.4.1 (iv) herein;

- iii. Appropriateness of contract terms; and
  - iv. Political affiliations of the bidder submitting the successful bid.
- 3.4.7 Procurement Committees must adopt the **Ministry of Finance Template Procurement Committee Submission Checklist** included as **Appendix 1** to this guidance note.

## **4. Meetings and conduct of the Procurement Committee**

4.1 In collaboration with the Specialist Procurement Unit, each procurement committee must establish procedures for the conduct of meetings, to be agreed by the HPE, and signed by all members.

4.2 The procedures referred to in paragraph 4.1 herein must account for: -

- i. The frequency of procurement committee meetings.
- ii. Procedures for special or emergency consideration of procurement recommendations.
- iii. Procedures related to the availability of documents or information for consideration by the committee.
- iv. Procedures by which a member will declare a conflict of interest, and the manner in which the committee is to proceed in such event.
- v. Standards of confidentiality and the treatment and handling of sensitive commercial information belonging to bidders.
- vi. Standards of reporting or record keeping to be observed.
- vii. Thresholds and limits of authority.
- viii. Other connected matters which in the view of the procuring entity will contribute to efficient and effective procurement.
- ix. A requirement that all approved bid evaluation reports should be covered by a control sheet on which each member will sign to indicate his or her recommendation or non-recommendation of a procurement submission, together with reasons for non-recommendation.
- x. A requirement that any control sheet to be signed by a procurement committee member should include the following statement:

***“I am aware of all laws on corruption control and prevention, and to the best of my knowledge, information and belief, I declare that in respect of this submission, I have no direct or indirect personal interest in the outcome of these procurement proceedings.”***