



Promoting Fairness, Transparency and
Efficiency in the Public Procurement Process

Public Procurement Commission

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CIRCULAR NO 08 /2023

To: All Permanent Secretaries, Chief Executive Officers, Regional Executive Officers, Heads of Procuring Agencies, and Heads of Department

From: Ms. Pauline Chase, Chairperson, Public Procurement Commission

Date: June 19, 2023

Subject: **Compliance with Section 39(3) of the Procurement Act, Cap. 73:05 – Requirement for an opportunity for the Procuring Entity to agree or disagree with the Report of the Evaluation Committee prior to contract award.**

Section 39(3) of the Procurement Act, Cap. 73:05 provides that-

“The procuring entity shall, if it agrees with the Report of the Evaluation Committee, publicly disclose the name of the tenderer identified by the Evaluation Committee as the lowest evaluated tenderer. If the procuring entity does not agree with the Evaluation Committee’s determination, the procuring entity shall issue an advisory recommendation to the Evaluation Committee regarding which bidder should be the lowest evaluated bidder, which recommendation the Evaluation Committee shall observe.”

The Public Procurement Commission hereby reminds that the aforesaid provision is mandatory and must be complied with.

Accordingly-

- The Report of the Evaluation Committee must be sent by the National Procurement and Tender Administration Board (NPTAB) to the Procuring Entity **BEFORE** the contract award decision is made and or published.
- The Procuring Entity must, within such reasonable time of receiving the Report, consider the Report and inform NPTAB, in writing, of its agreement or disagreement with the Report of the Evaluation Committee.
- On the Procuring Entity’s agreement, the contract award decision in accordance with the Report of the Evaluation Committee shall be made and published on NPTAB’s website.
- If the Procuring Entity is not in agreement with the Report of the Evaluation Committee, it shall so indicate in writing to NPTAB and issue an advisory recommendation to the

Evaluation Committee regarding which bidder should be the lowest evaluated bidder, which recommendation the Evaluation Committee shall observe. The contract award decision shall be made in accordance therewith and published on NPTAB's website.

The Public Procurement Commission issues this Circular to inform and remind Procuring Entities and NPTAB of the aforesaid legislative requirements and the mandatory requirement for adherence thereto. Particularly, the role of the Procuring Entity in the contract award decision.

The Public Procurement Commission may be contacted for further guidance.

Yours respectfully,

Pauline Chase

Pauline Chase (Ms.)
Chairperson

Public Procurement Commission
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cc: **Chairman, National Procurement and Tender Administration Board**