

Perspectives on KwaZulu-Natal

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KwaZulu-Natal pilots procurement and audit legislation

In the form of two pieces of legislation, KwaZulu-Natal has taken the lead by streamlining the provincial tender process and combating government fraud and corruption. **Janine Hicks** outlines the KwaZulu-Natal Procurement Bill and the KwaZulu-Natal Internal Audit Bill.

KwaZulu-Natal Procurement Bill

KwaZulu-Natal was chosen by the National Budget Forum as the pilot province to initiate procurement transformation, according to provincial Finance Minister Peter Miller. Describing the need for changes in the current system nationally, Miller says: "The present procurement system cannot be said to be 'wrong' in the way that it functions. It shows many of the elements one would expect to find in government procurement systems elsewhere. However, it is very centralised, process-driven and inefficient." Such reasons persuaded the national government to commission a total review of the procurement system. According to Miller, "the review process made it clear that procurement needs to move towards best practice with a view to breaking the nationwide dependence on process and procedure".

The KwaZulu-Natal Procurement Bill seeks to give effect to the national Preferential Procurement Policy Framework Act of 2000 by establishing a system for the procurement of goods and services, the disposal of goods and the granting of property rights by the provincial government. It attempts to do this in a manner that is fair, equitable, transparent, competitive and cost-efficient. Tabled before the provincial legislature's Finance Portfolio Committee on December 4, the legislation is applicable to every provincial department and to the legislature.

The Bill provides for the establishment of an 11-member Central Procurement Committee to replace the current KwaZulu-Natal Tender Board. Housed by the provincial Department of Finance, this committee will be responsible, on behalf of the provincial government, for evaluating tenders and awarding contracts worth more than R500 000. The Bill proposes that representatives of civil society be appointed to the Central Procurement Committee to increase the transparency of its activities. This represents a change from the composition of the Tender Board, which consisted of a majority of private members.

A Procurement Administration Office and internal tender committees are also provided for in the Bill. The function of the Administration Office is to promote equity and the empowerment of small, medium and micro-enterprises, provide administrative support

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and guidance to the Central Procurement Committee, and facilitate accountability by accounting officers. In addition, each department is required to establish a Tender Award Committee and one or more Tender Evaluation Committees, to review and grant tenders up to a maximum of R500 000. The Bill proposes that the private sector be represented on these committees. Each department will also set up an internal Procurement Support Unit to provide administrative support to internal tender committees.

Minister Miller says that increasing the delegation of powers to both the accounting officers, who are able to award contracts to a higher value than was previously allowed, and to the Procurement Administration Office "will lead to greater efficiencies and a generally faster procurement process from start to finish".

In instances where a department is not using its delegated powers in a satisfactory manner the Bill provides for intervention by the Minister of Finance. This would result in the department's procurement functions being undertaken by the Central Procurement Committee. The Bill also prohibits the disclosure of confidential information and the acceptance of donations, rewards and benefits by committees and officials.

The need for changes in the tender process was apparent when the Finance Portfolio Committee held public hearings on the Bill in Pietermaritzburg and Ulundi in February. It became clear at the Pietermaritzburg hearing that many emerging contractors are dissatisfied with the current process of awarding tenders and the way in which their requests for information and grievances are addressed.

From its side, the committee discussed in detail the need to ensure that tender processes are accessible to emerging contractors. Committee members also expressed great concern about the need for transparency in the awarding of tenders. They debated in particular whether there is a need for a Tender Appeals Tribunal to consider appeals against decisions of the Central Procurement Committee, since the Bill will see the dissolution of the existing Tender Appeals Tribunal. A concern was raised that this might delay the tender process in cases where a decision is needed urgently, and may lead to nuisance or frivolous appeals.

Minister Miller says that at a minimum the Procurement Act, once enacted, would ensure that public procurement is done "faster, smarter and cost effectively" and powers of procurement are allocated to the relevant role players in accordance with their responsibilities in respect of procurement.

Calling for the legislature to support the Bill when it was tabled for debate on February 27, Miller described the reform process of procurement in KwaZulu-Natal and South Africa as "one of the most important and exciting developments to take place since the inception of the new dispensation".

KwaZulu-Natal Internal Audit Bill

Finance minister Peter Miller views the Internal Audit Bill, with its purpose of regulating the internal audit function, as a milestone in the province's quest to improve financial management at all levels in the KwaZulu-Natal government. Providing for the establishment and regulation of an Internal Audit Unit within the Department of Finance, the objective of the Bill is to contribute towards the achievement of transparency, accountability and sound management. The provincial legislation emanates from the

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Public Finance Management Act, which makes provision for provinces to define and legislate on an internal audit function to this end.

The Bill allocates significant powers to the Internal Audit Unit, which will have access to all provincial government information and records to evaluate business processes and control systems of the province. It will prepare annual audit plans and report on irregularities or weaknesses to departmental accounting officers. It will investigate matters referred to it by the national or provincial Cabinet, or any departmental head, and report and make recommendations to the Audit Committee.

Miller says that underlying principles that have underpinned the need for the Unit include the need for internal auditors to preserve their independence and be objective at all times. "Indeed, the hallmark of an internal audit function rests on its ability to provide independent assurance to senior management and the audit committee," states Miller. The minister says that internal auditors also need to be proactive in order to maximise the value of their services.

Findings and recommendations based on these audit reports will be issued by the Audit Committee to accounting officers. The Committee may instruct any accounting officer to appear before it to give evidence, or provide any information or documents required. Relevant departmental management will be responsible for initiating corrective measures to respond to these recommendations. A capable and well-functioning Audit Committee, says Miller, has the potential to strengthen the control environment and assist department heads "to fulfil their stewardship, leadership and control responsibilities".

The effectiveness of the Internal Audit Unit hinges on access to information and co-operation from departmental staff. As a result, the Bill decrees it an offence to attempt to obstruct access to records or the work of the Unit and Audit Committee generally. In presenting the Bill to the KwaZulu-Natal legislature's Finance Portfolio Committee on January 15, Miller reported that this proposed internal audit function will tackle the issue of fraud by identifying risk areas, the scale of the risk and allocating responsibility for that risk. It will identify the need for revised controls, make recommendations on controls and monitor their implementation and effectiveness.

Miller states that the overall aim of the Bill is to assist the auditors by providing a regulatory framework for discharging their duties. "The Bill inherently embodies the critical areas that should fall within the scope and ambit of internal audit," he says.

The Bill was debated and approved by the legislature on January 29. It is currently before KwaZulu-Natal Premier Lionel Mtshali for assent and signature after which it will be proclaimed in the *Provincial Gazette* as an Act.

Miller says: "The challenge for Internal Audit in the period ahead is to make itself indispensable to departmental management. While it is important to maintain audit independence, it should be possible to forge a partnership arrangement that focuses on issues of greatest risk to management in their accountability relationships with the department's various stakeholders. Such a partnership should also extend, in a complementary fashion, to external audit and the services it provides... Internal audit can therefore add value not only to the management performance of the department, but also to the public sector as a whole."

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A model for other provinces

In tabling this legislation, KwaZulu-Natal has set the lead for other provinces to follow. Together the Bills put into place measures to strengthen the provincial government's business practices, eliminate fraud and establish an accessible, transparent procurement system that empowers emerging contractors. The passing of the legislation represents for Minister Miller a great achievement summed up in his budget speech shortly after the opening of the KwaZulu-Natal legislature in February. The minister said that the current financial year had been the most successful for the department of finance in terms of the results that it has achieved. "Whether measured against the overall goal of reforming the fiscal and financial management practices in the province, or the objectives of the individual programmes and projects for which it is responsible, the department has met and in some cases exceeded all the targets which it set for itself during the past year."

Janine Hicks is programme manager at the Provincial Parliamentary Programme.

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