

## **KWA-ZULU PROCUREMENT ACT NO 3 OF 2001 (as amended)**

To provide for a procurement system to give effect to section 217 of the Constitution, and to provide for matters connected therewith.

**BE IT ENACTED** by the Parliament of the Province of KwaZulu-Natal, as follows :-

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## CHAPTER 1

### INTERPRETATION, OBJECTIVES AND APPLICATION OF THIS ACT

#### Definitions

1. In this Act -

**Accounting officer -**

- (a) in relation to a department, means the accounting officer for the department within the meaning of section 36 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
- (b) in relation to Parliament, means the Secretary to Parliament;

**Cabinet** means the Executive Council of the Province as contemplated in section 132 of the Constitution;

**Central Procurement Committee** means the Committee established under section 4;

**Chief financial officer -**

- (a) in relation to a department, means the chief financial officer of a department appointed in terms of the regulations made under the Public Finance Management Act, 1999 (Act No.1 of 1999); and
- (b) in relation to Parliament, means an officer in the administration of Parliament designated by the accounting officer of Parliament as the chief financial officer of Parliament;

**Code of Ethics** means rules of conduct developed under section 5(1)(c);

**Constitution** means the Constitution of the Republic of South Africa, 1996 (Act 108

of 1996);

**Delegated limit** means a contract price that does not exceed the prescribed monetary limit;

**Department** means that department within the KwaZulu-Natal provincial administration dealing primarily with finance matters;

**Department** means a department within the KwaZulu-Natal provincial administration and listed in the first column of Schedule 2 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

**Fruitless and wasteful expenditure** means expenditure that was made in vain and would have been avoided had reasonable care been exercised;

**Internal tender committee** means -

- (a) a Tender Award Committee; or
- (b) a Tender Evaluation Committee;

**Minister** means the Member of the Executive Council responsible for the administration of this Act;

**Parliament** means the provincial legislature of KwaZulu-Natal;

**Portfolio Committee** means the committee of Parliament dealing primarily with finance matters;

**Prescribed** means prescribed by regulations made under section 47;

**Procurement Administration Office** means the Procurement Administration Office established under section 26;

**Provincial government** means -

- (a) the departments; and
- (b) Parliament;

**Tender Award Committee** means a Tender Award Committee established under section 28(a);

**Tender Evaluation Committee** means a Tender Evaluation Committee established under section 28(b); and

**This Act** includes the regulations made under section 47.

### **Primary objectives**

2. The primary objectives of this Act are -
- (a) to establish a system for the procurement of goods and services, the disposal of goods and the granting of rights, by the provincial government, that is fair, equitable, transparent, competitive and cost-effective;
  - (b) to give effect to the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
  - (c) to create and sustain conditions for the empowerment of small, medium and micro-enterprises; and
  - (d) to facilitate accountability by accounting officers with respect to matters to which this Act applies.

### **Application of this Act**

3. (1) This Act applies to -
- (a) every department; and
  - (b) Parliament.
- (2) A department and Parliament may only through the mechanisms and procedures provided for in this Act, read with the relevant provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), -
- (a) procure immovable property, goods or services;
  - (b) dispose of immovable property or goods no longer required by it; and
  - (c) grant or acquire rights.

## **CHAPTER 2**

### **CENTRAL PROCUREMENT COMMITTEE**

#### ***Part 1 : Establishment and functions of the Central Procurement Committee***

##### **Establishment of the Central Procurement Committee**

4. A Central Procurement Committee is established in the Department.

##### **Functions of the Central Procurement Committee**

5. (1) The Central Procurement Committee must do all that is necessary or expedient to achieve the objectives of this Act under section 2, and for this purpose must -
- (a) adjudicate tenders and award contracts for the procurement of immovable property, goods or services, the disposal of goods or the granting of rights by the provincial government in cases where the value of the contract is -
    - (i) above the delegated limit; or
    - (ii) within the delegated limit and -
      - (aa) the Tender Award Committee of a department or

- Parliament has referred the matter to the Central Procurement Committee under section 37;
  - (bb) the accounting officer of a department or Parliament has referred the matter to the Central Procurement Committee under section 36(2); or
  - (cc) the Minister has directed under section 43 that the matter be referred to the Central Procurement Committee;
- (b) forward, within seven days of the award of a tender, a written notice to every tenderer who participated in the tender, at the address provided in the tender documents, stating to which tenderer the tender has been awarded; and
  - (c) consider and approve or decline applications for condonation of procurement or disposal done in a manner not in compliance with procedures provided for under this Act; and
  - (d) develop and implement a Code of Ethics governing the behaviour of members of the Central Procurement Committee, the Tender Award Committees and the Tender Evaluation Committees, and of advisors co-opted by these committees.
- (2) In performing its functions, the Central Procurement Committee must comply with any applicable -
    - (a) national and provincial legislation;
    - (b) national and provincial procurement policies; and
    - (c) instructions issued under section 48.

***Part 2: Composition and membership of the Central Procurement Committee***  
**Composition and membership of the Central Procurement Committee**

- 6. (1) The Central Procurement Committee consists of eleven members of whom -
  - (a) six must be appointed to represent the departments;
  - (b) four must be appointed from civil society; and
  - (c) one must be appointed from the Procurement Administration Office.
- (2) The Minister must -
  - (a) appoint the members referred to in subsection (1) after consultation with Cabinet and the Portfolio Committee; and
  - (b) appoint the members referred to in subsection (1)(b) on a part-time basis and at the prescribed rate of remuneration.

**Qualifications for membership**

- 7. The members of the Central Procurement Committee must -
  - (a) collectively have appropriate skills and expertise that will enhance the

- (b) capacity and effectiveness of the committee; and
- (b) be fit and proper persons to hold office as members of the Committee.

### **Term of office of members**

- 8. (1) The Minister must, at the time of appointment of a member of the Central Procurement Committee under section 6(1)(a) or (c), determine the term of office of each member, up to a maximum period of five years.
- (2) A member appointed under section 6(1)(b) must be appointed for a term of three years, and is eligible for reappointment.

### **Removal from office of a member of the Central Procurement Committee**

- 9. (1) The Minister may remove a member of the Central Procurement Committee from office -
  - (a) if, in the opinion of the Minister, the resultant change in membership would be in the best interests of provincial government on grounds of increased ability of the Committee to achieve the objectives of this Act; or
  - (b) if the member -
    - (i) becomes incapacitated;
    - (ii) contravenes any provision of this Act; or
    - (iii) fails to attend three consecutive meetings without reasonable justification.
- (2) The Minister must remove a member of the Central Procurement Committee from office if -
  - (a) the member is convicted of an offence involving dishonesty, including but not limited to offences such as theft, fraud, forgery, perjury or an offence under the Corruption Act, 1992 (Act No. 94 of 1992); or
  - (b) the member is convicted of an offence and sentenced to imprisonment without the option of a fine.

### **Chairperson and Deputy Chairperson**

- 10. (1) The Minister must appoint a member of the Central Procurement Committee as the Chairperson and another as the Deputy Chairperson.
- (2) The Deputy Chairperson must act as chairperson when -
  - (a) the Chairperson is absent or unable to perform the functions of chairperson; or
  - (b) the office of chairperson is vacant.

### **Conduct of members**

- 11. (1) A member of the Central Procurement Committee -
  - (a) must perform the functions of office in good faith and without favour or

- prejudice;
  - (b) must disclose to the Central Procurement Committee any personal or private business interest which the member or any spouse, partner or close family of the member may have in any matter before the Committee, and must withdraw from the proceedings of the Committee when that matter is considered, unless the Committee decides that the interest in the matter is trivial or irrelevant;
  - (c) may not use the position or privileges of a member for private gain or to improperly benefit another person;
  - (d) must comply with the Code of Ethics;
  - (e) may not, subject to section 44, disclose confidential information obtained as a member of the Central Procurement Committee; and
  - (f) may not act in any other way that compromises the credibility or integrity of the Central Procurement Committee.
- (2) A member who contravenes subsection (1) commits misconduct and is subject to summary dismissal.

### ***Part 3: Operational procedures of the Central Procurement Committee***

#### **Meetings of the Central Procurement Committee**

12. (1) The Central Procurement Committee must meet -
- (a) whenever necessary, but at least once a month;
  - (b) at a time determined by the Chairperson; and
  - (c) at a venue determined by the Head of the Department.
- (2) The Chairperson or Deputy Chairperson must preside at a meeting of the Committee, but if both the Chairperson and the Deputy Chairperson are not available, the members present must elect another member to act as chairperson for that meeting.

#### **Meeting procedures of the Central Procurement Committee**

13. Subject to this Act, the Central Procurement Committee must determine the procedure for its meetings.

#### **Access to meetings of the Central Procurement Committee**

14. A person may only attend or be present at a meeting of the Central Procurement Committee -
- (a) with the permission of the Committee;
  - (b) if he or she is an official of the Procurement Administration Office; or
  - (c) when authorised to attend by national or provincial legislation, or an order of court.

#### **Quorum and decisions of the Central Procurement Committee**

15. (1) A meeting of the Central Procurement Committee is properly constituted by

the attendance of at least six members, of whom at least two must be members appointed from civil society.

- (2) A question before the Committee is decided by a supporting vote of at least the majority of the members present at a meeting of the Committee which is properly constituted under subsection (1).
- (3) If, on any matter to be decided by the Committee under subsection (2), there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to his or her vote as a member.

### **Disagreements with Procurement Administration Office**

16. If the Procurement Administration Office has made a recommendation to the Central Procurement Committee on the award of a tender and the Committee disagrees with the recommendation, the Committee must, before it takes a final decision, first consult with the Procurement Administration Office and the department or Parliament on whose behalf the award has to be made.

### **Advisors**

17. (1) The Central Procurement Committee may co-opt advisors from within or outside the provincial government to be present at and to participate in its meetings.
- (2) An advisor under subsection (1) has no voting rights.
- (3) A person co-opted as an advisor who is not an employee in the public service may be remunerated at the prescribed rate.
- (4) An advisor must declare to the Committee any conflict of interest, including but not limited to -
  - (a) his or her status as an interested and affected party to the tender; or
  - (b) the fact that he or she provided advice to the tenderer in respect of the tender under discussion.

### **Bi-annual and Parliamentary reports**

18. (1) During April and October of each year, the Central Procurement Committee must submit a report on its activities during the preceding six months to the Minister.
- (2) The report under subsection (1) must contain the prescribed particulars.
- (3) The Minister must table a report annually in Parliament on the activities of the Central Procurement Committee.

## CHAPTER 3

### APPEALS

#### **Tender Appeals Tribunal**

- 19.** (1) The Minister must, after following the procedure laid down in this Act, establish an independent and impartial Tender Appeals Tribunal.
- (2) A member of the Appeals Tribunal must possess the attributes listed as qualifications for membership of the Central Procurement Committee under section 7.
- (3) The Appeals Tribunal must consist of three members appointed from civil society.
- (4) One of the members of the Appeals Tribunal must be qualified to be admitted to practice as a legal practitioner in the Republic and have experience related to the application or administration of the law, or have lectured in law at a university in the Republic.
- (5) The other two members of the Appeal Tribunal must have knowledge of the procurement process.
- (6) The Minister must appoint the members of the Appeals Tribunal after consultation with Cabinet and the Portfolio Committee.
- (7) The Minister must appoint the person referred to in subsection (4) as the Chairperson of the Appeals Tribunal.

#### **Appeal Procedure**

- 20.** (1) The following entities aggrieved by a decision of the Central Procurement Committee, a Tender Award Committee or a delegate of a Tender Award Committee may appeal to the Appeals Tribunal in the prescribed manner -
- (1) a department or Parliament; and
- (2) a tenderer.
- (2) (a) The department, Parliament or tenderer must, within five days of receipt of the notification under section 5(1)(b) or 35(2) of the decision appealed against, deliver written notification of an intention to appeal.
- (b) The department, Parliament or tenderer may, together with the notification of intention to appeal under paragraph (a), deliver a request for written reasons for the tender award decision.
- (c) The Central Procurement Committee, Tender Award Committee or delegate of a Tender Award Committee must deliver to the appellant the written reasons requested under paragraph (b) within ten days.
- (d) The appellant must, within ten days of receipt of the written reasons

delivered under paragraph (c), or, failing a request for written reasons under paragraph (b), within the ten days referred to in paragraph (c), submit written representations to the Appeals Tribunal indicating sufficiently and without unnecessary elaboration the grounds and basis of the appeal and the nature of the complaint.

- (3) Upon receipt of a notice of intention to appeal under subsection (2)(a), the Appeals Tribunal must notify other tenderers who may be adversely affected by the appeal in writing of the appeal and invite them to respond within five days.
- (4) No oral hearing of appeals will be allowed unless the Chairperson of the Appeals Tribunal, in the interests of justice issues a directive indicating otherwise, in which event the procedure to be followed will be as prescribed.
- (5) A decision of the majority of the members of the Appeals Tribunal will be the decision of the Appeals Tribunal.

### **Grounds of Appeal**

21. The Appeals Tribunal may interfere with a decision of the Central Procurement Committee, a Tender Award Committee or a delegate of a Tender Award Committee only if the Central Procurement Committee, Tender Award Committee, a member of either committee or the delegate -
  - (1) committed misconduct in relation to their duties as members;
  - (2) committed a gross irregularity;
  - (c) exceeded its or their power;
  - (d) awarded a tender in an improper manner; or
  - (e) awarded a tender inconsistent with the objectives of this Act.

### **Determining whether an Appeal is frivolous, vexatious or without merit**

22. (1) The Chairperson of the Appeals Tribunal must determine, within three days after receipt of the written representations of an appellant under section 20(2)(d), whether an appeal is frivolous, vexatious or without any merit.
- (2) If the Chairperson of the Appeals Tribunal finds under subsection (1) that an appeal is frivolous, vexatious or without any merit, the Chairperson of the Appeals Tribunal -
  - (1) must dismiss the appeal and in writing notify the appellant and any other tenderer which responded under section 20(3) of the decision, together with reasons for the decision; and
  - (b) may make an appropriate order as to costs, which may include the costs to the Province of having the appeal heard.

### **Powers of the Appeals Tribunal**

23. (1) In respect of appeals not determined under section 22 to be frivolous, vexatious or without any merit, the full Appeals Tribunal must -

- (1) hear and finalize the appeal within fourteen days of the determination under section 22;
  - (2) make recommendations to the Minister to confirm, vary or set aside the decision of the Central Procurement Committee, Tender Award Committee or delegate; and
  - (1) may make an appropriate order as to costs, which may include the costs to the Province of having the appeal heard.
- (2) If the award is set aside, the Appeals Tribunal must make any order it considers appropriate regarding the procedures to be followed to determine the matter.

#### **Public trust and confidentiality**

24. The provisions of section 11 are, with the necessary modifications, applicable to members and staff of the Appeals Tribunal.

#### **Remuneration of members of the Appeals Tribunal**

25. The Minister must prescribe the remuneration and allowances payable to a member of the Appeals Tribunal out of the funds of the Central Procurement Committee.

## **CHAPTER 4**

### **PROCUREMENT ADMINISTRATION OFFICE**

#### **Establishment of the Procurement Administration Office**

26. (1) A Procurement Administration Office is established within the Department.
- (2) The Procurement Administration Office must be composed of officials of the Department designated by the Head of the Department.

#### **Reports**

27. The Procurement Administration Office must, as often as the Minister may require, report to him or her on procurement processes and practices within the provincial government.

## **CHAPTER 5**

### **INTERNAL PROCUREMENT STRUCTURES**

#### ***Part 1: Establishment, functions and membership of internal tender committees***

28. The accounting officer of a department and of Parliament must establish within their respective administrations the following internal tender committees -
- (a) a single Tender Award Committee; and
  - (b) one or more Tender Evaluation Committees.

## **Functions of Internal Tender Committees**

- 29.** (1) The functions of a Tender Award Committee are -
- (a) to adjudicate on tenders with the delegated limit for the procurement of immovable property, goods or services, the disposal of immovable property, goods or the granting of rights by a department or Parliament, taking into account the recommendations of the relevant Tender Evaluation Committee;
  - (b) to award contracts within the delegated limit for the procurement of immovable property, goods or services, the disposal of immovable property or goods, or the granting of rights by a department or Parliament, taking into account the recommendations of the relevant Tender Evaluation Committee;
  - (c) to perform any other function delegated to it by the accounting officer of a department or Parliament under any applicable national or provincial legislation; and
  - (d) to refer tenders above the delegated limit to the Central Procurement Committee for adjudication.
- (2) The functions of a Tender Evaluation Committee are -
- (a) to evaluate tenders for the procurement of goods or services, the disposal of goods or the granting of rights by a department or Parliament; and
  - (b) to make recommendations to the relevant Tender Award Committee on the award of contracts within the delegated limit.
- (3) In performing its functions, an internal tender committee must comply with any applicable -
- (a) national and provincial legislation;
  - (b) national and provincial procurement policies; and
  - (c) instructions issued under section 48.

## **Composition of the Tender Award Committee and a Tender Evaluation Committee**

- 30.** (1) A Tender Award Committee must consist of -
- (a) the chief financial officer of the department or Parliament, who must be the chairperson of the Committee;
  - (b) the head of the procurement support structure within the department or Parliament;
  - (c) two management officials in the department or Parliament; and
  - (d) one person from civil society.
- (2) (a) A Tender Evaluation Committee must consist of not less than three officials of the department or Parliament who are not members of the Tender Award Committee.
- (b) The accounting officer of the department or Parliament must designate a member of the Tender Evaluation Committee to be the chairperson.

- (3) (a) Subject to paragraph (b), the accounting officer must appoint the members referred to in subsection (1)(c) and (d), and the members referred to in subsection (2).
- (b) An appointment under paragraph (a) only takes effect -
  - (1) if the appointment is ratified by the Minister responsible for the department, after consultation with the relevant portfolio committee; or
  - (ii) if the appointment is ratified by the Speaker of Parliament, after consultation with the Executive Board.
- (4) The member referred to in subsection (1)(d) -
  - (1) must be appointed by the accounting officer for a term of office determined by the Minister responsible for the department, or the Speaker of Parliament, up to a maximum period of three years; and
  - (2) may be remunerated at the prescribed rate.
- (5) An official from the Procurement Administration Office may attend and participate in meetings of an internal tender committee in an advisory capacity, but has no voting rights in the committee.

### **Conduct of members**

- 31.** (1) A member of an internal tender committee -
- (a) must perform the functions of office in good faith and without favour or prejudice;
  - (b) must disclose to the committee any personal or private business interest which the member, or any spouse, partner or close family member, may have in any matter before the committee, and must withdraw from the proceedings of the committee when that matter is considered, unless the committee decides that the interest in the matter is trivial or irrelevant;
  - (c) may not use the position or privileges of a member for private gain or to improperly benefit another person;
  - (d) must comply with the Code of Ethics;
  - (e) may not, subject to section 44, disclose confidential information obtained as a member of the committee; and
  - (f) may not act in any other way that compromises the credibility or integrity of the committee.
- (2) A member who contravenes subsection (1) commits misconduct and is subject to summary dismissal.

### ***Part 2: Operational procedures of internal tender committees***

#### **Meetings of an Internal Tender Committee**

- 32.** (1) An internal tender committee must meet when necessary.

- (2) (a) Subject to paragraph (b), the chairperson of the committee must decide when and where the committee meets.
- (b) The chairperson must, upon receipt of a written request from a majority of the members, convene a meeting at the requested time and place, or an alternative agreed time and place.
- (3) The chairperson must preside at a meeting of the committee, but if the chairperson is not available the members present must elect another member to act as chairperson for that meeting.

#### **Meeting procedures of an Internal Tender Committee**

**33.** An internal tender committee must determine the procedure for its meetings.

#### **Access to meetings of an Internal Tender Committee**

- 34.** A person may only attend or be present at a meeting of an internal tender committee
- (a) with the permission of the committee;
  - (b) if he or she is the accounting officer or another official authorised by the accounting officer; or
  - (c) when authorised to attend by national or provincial legislation, or an order of court.

#### **Decisions of an Internal Tender Committee**

- 35.** (1) A question before an internal tender committee is decided by a supporting vote of the majority of the members of the committee.
- (2) A Tender Award Committee must forward, within seven days of the award of a tender, a written notice to every tenderer who participated in the tender, at the address provided in the tender documents, stating to which tenderer the tender has been awarded.

#### **Disagreements between Internal Tender Committees**

- 36.** (1) If a Tender Award Committee disagrees with a recommendation of the Tender Evaluation Committee on the award of a tender, the Tender Award Committee must refer the matter back to the Tender Evaluation Committee for re-evaluation and recommendation.
- (2) If the Tender Award Committee again disagrees with the recommendation of the Tender Evaluation Committee after its re-evaluation, the accounting officer must refer the matter to the Central Procurement Committee for a decision.

#### **Referral to Central Procurement Committee**

- 37.** A Tender Award Committee of a department or Parliament may, on account of the complexity or sensitivity of a matter, refer the matter to the Central Procurement Committee for evaluation and decision.

### **Advisors**

- 38.** (1) An internal tender committee may co-opt not more than one advisor from within or outside the provincial government to be present at and to participate in meetings of the committee to provide specific expertise in respect of a particular tender.
- (2) An advisor co-opted by an internal tender committee is not a member of the committee and has no voting rights in the committee.
- (3) A person co-opted as an advisor who is not an employee in the public service may be remunerated at the prescribed rate.
- (4) An advisor must declare to the committee any conflict of interest, including but not limited to -
- (a) his or her status as an interested and affected party to the tender; or
  - (b) the fact that he or she provided advice to the tenderer in respect of the tender under discussion.

### **Delegation**

- 39.** (1) A Tender Award Committee of a department or Parliament may, with the approval of the accounting officer, delegate in writing to an official in the department or Parliament the function to consider and award a tender.
- (2) A delegation under subsection (1) -
- (a) is subject to any conditions or limitations prescribed or determined by the accounting officer; and
  - (b) does not divest the Tender Award Committee of the responsibility to perform the delegated function.
- (3) (a) Subject to paragraph (b), a Tender Award Committee may confirm, vary or revoke any decision taken in consequence of a delegation under subsection (1).
- (b) A decision may not be varied or revoked where the variation or revocation may detract from any rights that may have accrued as a result of the decision.

### **Accountability of Internal Tender Committees**

- 40.** (1) An internal tender committee of a department or Parliament is accountable to the accounting officer of the department or Parliament.
- (2) The accounting officer of a department or Parliament must ensure that the procurement system of the department or Parliament functions in accordance with this Act and in a manner that is fair, equitable, transparent, competitive and cost-effective.

### ***Part 3: Internal procurement support units***

#### **Establishment of Internal Procurement Support Units**

41. The accounting officer of a department or Parliament must establish within his or her administration an administrative unit to provide administrative support services to the internal tender committees of the department or Parliament.

#### **Functions of Internal Procurement Support Units**

42. An internal procurement support unit must, in relation to an internal tender committee of a department or Parliament, perform the functions as may be prescribed or as the accounting officer of the department or Parliament may direct.

## **CHAPTER 6**

### **GENERAL**

#### **Intervention by Minister**

43. When a committee referred to in this Act fails to fulfil its statutory obligations, or the Minister is of the opinion that a specific tender will involve complicated, contentious or urgent issues, the Minister may, after consultation with the minister for the relevant department or the Speaker of Parliament, direct that -
- (a) a matter within the delegated limit be referred to the Central Procurement Committee for adjudication; or
  - (b) a delegation under section 39 be withdrawn.

#### **Protection of confidential information**

44. A person may not disclose confidential information obtained in the implementation of this Act, except -
- (a) within the scope of that person's powers and duties under this Act or other applicable legislation;
  - (b) for the purpose of carrying out the provisions of this Act;
  - (c) with the permission of the Minister, the Central Procurement Committee or an internal tender committee;
  - (d) for the purpose of legal proceedings; or
  - (e) under an order of court.

#### **Acceptance of benefits prohibited**

45. A member of the Central Procurement Committee or an internal tender committee, or an official or advisor involved in the work of any of these committees, may not accept any benefit of whatever nature if the benefit is presented in an attempt to influence the receiver in an improper manner.

#### **Offences and penalties**

46. (1) A person who contravenes sections 11(1)(b), 17(4), 38(4), 44 or 45 commits an offence.

- (2) A person convicted of an offence under subsection (1) is liable to imprisonment not exceeding 5 years, a fine, or both the imprisonment and a fine.

### **Regulations**

- 47.** The Minister may, after consultation with the Portfolio Committee, make regulations consistent with this Act and the Public Finance Management Act, 1999 (Act No. 1 of 1999) regarding -
- (a) any matter which may be prescribed under this Act;
  - (b) the functions, powers and responsibilities of the Procurement Administration Office;
  - (c) the conditions on which, and the limitations within which, the Tender Award Committee of a department or Parliament may delegate the function to evaluate and award tenders to an official in the department or Parliament;
  - (d) the functions, powers and responsibilities of the internal procurement support units; and
  - (e) any other matter necessary to facilitate the effective implementation of this Act.

### **Ministerial instructions**

- 48.** The Minister may issue written instructions to accounting officers and any structure established under this Act to ensure compliance with -
- (a) section 217 of the Constitution;
  - (b) the Public Finance Management Act, 1999 (Act No. 1 of 1999), to the extent that it relates to procurement;
  - (c) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000); and
  - (d) this Act.

### **Repeal of legislation**

- 49.** (1) Subject to subsection (2), and on a date to be determined by the Minister by notice in the Province Gazette, this Act will repeal the KwaZulu-Natal Tender Board Amendment Act, 1997 (Act No. 4 of 1997).
- (2) The date to be determined under subsection (1) must -
- (a) be a date after the commencement of this Act; and
  - (b) allow for all matters pending at the commencement of this Act to be completed under the Tender Board Amendment Act, 1997 (Act No. 4 of 1997).

### **Transitional arrangements**

- 50.** (1) In this section, "Tender Board Amendment Act" means the KwaZulu Tender Board Amendment Act, 1997 (Act No. 4 of 1997).
- (2) This Act does not affect the validity of anything done under the Tender Board Amendment Act Before the date referred to in section 49.

- (3) The Central Procurement Committee must complete all matters pending under the Tender Board Amendment Act at the commencement of this Act as if it were the Tender Board referred to in the Tender Board Amendment Act, and for this purpose the Central Procurement Committee has the powers of the Tender board under the Tender Board Amendment Act.
- (4) The Tender Appeals Tribunal referred to in section 19 of this Act must complete all matters pending under the Tender Board Amendment Act and any matters arising out of the application of section 50(2), and for this purpose has the same powers as the Appeals Tribunal under the Tender Board Amendment Act.
- (5) Any regulations made and directives or delegations issued under the Tender Board Amendment Act remain in force until replaced or revoked under this Act.

**Short title and commencement**

- 51.** This Act is called the KwaZulu-Natal Procurement Act, 2001, and takes effect on a date determined by the Minister by notice in the Provincial Gazette.