

LEGAL NOTICE No. 206

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT

*(No. 33 of 2015)*

IN EXERCISE of powers conferred by section 24(5)(d) of the Public Procurement and Asset Disposal Act, 2015, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Order—

THE PUBLIC PROCUREMENT CAPACITY BUILDING LEVY  
ORDER, 2023

1. This Order may be cited as the Public Procurement Capacity Building Levy Order, 2023. Citation.

2. In this Order, unless the context otherwise requires—

“Act” means the Public Procurement and Asset Disposal Act, 2015;

“contract value” means the sum at which the tender is accepted and the basis of signing of the procurement contract;

“development partner” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; No. 18 of 2012.

“Director-General” means the Director-General of the Public Procurement Regulatory Authority as provided for under section 15 of the Act;

“supplier” has the meaning assigned to it under section 2 of the Act;

“Public Procurement Regulatory Authority” means the Public Procurement Regulatory Authority as established under section 8 of the Act;

“procurement contract” has the meaning assigned to it under section 2 of the Act; and

“procuring entity” has the meaning assigned to it under section 2 of the Act.

3. (1) There shall be paid a Levy by a supplier on all procurement contracts signed between the supplier and a procuring entity, at the rate of zero point zero three per centum (0.03%) of the value of the signed contract, exclusive of applicable taxes. Imposition of levy.

(2) With respect to multi-year procurement contracts, the procuring entity shall ensure that full amount of the Levy is determined on the total procurement contract price and progressively deducted and remitted accordingly:

Provided that the same shall apply to contracts with part payments or instalments or milestone-based procurement contracts.

(3) For avoidance of doubt and for the purposes of this Order, local purchase orders and local service orders shall be deemed to be contracts, as and when applied.

4. The purpose of the Levy shall be to provide funds for the development of capacity through training, technical support and mentoring of the persons involved in the public procurement and asset disposal system in order to facilitate achievement of value for money in public procurement and enhance quality of public service. Purpose of the Levy.

5. (1) A procuring entity shall—
- (a) deduct the Levy from the contract value at the time of making payments for such contracts; and
- (b) not later than the 20<sup>th</sup> day of the following month, remit the funds to the Public Procurement Regulatory Authority or its authorised agent.
- (2) A person who fails to comply with the provisions this paragraph shall be liable to payment of a penalty equivalent to 5% of the unpaid funds for every month the same remains unpaid.
- (3) Non-remittance of any sum due under this paragraph shall be deemed to be a civil debt recoverable summarily by the Director-General or a person duly authorized by the Director-General.
6. (1) A person liable to a penalty under this Order may apply in writing to the Director-General for the waiver of the penalty payable including the reasons thereof.
- (2) The Director-General, upon the advice of the Public Procurement Regulatory Board, may waive in whole or in part any penalty due from any procuring entity for any period of time.
- (3) The Director-General shall maintain a record of each waiver together with the reasons for the waiver.
7. Where a procuring entity has made an excess payment of the Levy amount due to the Public Procurement Regulatory Authority, the payment shall be deemed to be a pre-payment of the Levy payable in the subsequent months.
8. This Order shall not apply to contracts fully financed by development partners.
9. (1) Every procuring entity shall maintain or cause to be maintained monthly records in the Levy Return Form in the format set out in Form SL. 1 in the Schedule to this Order.
- (2) Such returns shall be made through the Public Procurement Information Portal, accessible through <https://tenders.go.ke>
- (3) The Director-General may, from time to time, access the records maintained by procuring entities for purposes of review and assessment.
10. The Director-General shall upon receipt of returns from procuring entities, maintain or cause to be maintained a record of all amounts received with respect to this Order.

Obligation of  
procuring entity.

Waiver  
of Penalty.

Excess payment  
Levy.

Exemption.

Maintenance of  
records by  
procuring entities.

Obligation to  
maintain records.

## SCHEDULE

[par. 9(1)]

FORM SL. 1: THE PUBLIC PROCUREMENT CAPACITY BUILDING LEVY  
RETURN

1. Name of Procuring Entity .....
- Physical Address .....
- Email Address .....
- Telephone No. ....
2. Period covered by this return from ....., 20..... to ....., 20 .....

1	2	3	4	5	6
Contract No.	Supplier Name	Contract Value in Kshs.	Rate of Levy	Total Levy payable Kshs.	Amount Paid Kshs.

I, ..... hereby certify that the information in this return is true, correct and complete.

.....  
Signature and Designation  
(Official stamp)

Made on the 6th November, 2023.

NJUGUNA NDUNG’U,  
Cabinet Secretary for the  
National Treasury and Economic Planning.