

Annual Report & Accounts

2008/2009

Public Procurement Oversight Authority
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VISION

To be a world class Public Procurement Oversight Authority

MISSION STATEMENT

To innovatively design and facilitate an effective procurement and supply chain system that provides value for money, by ensuring competition, fairness, transparency and accountability while contributing to national socio-economic development

CORE VALUES

- Integrity and courage
- Fairness
- Commitment and teamwork
- Social responsibility
- Transparency and accountability
- Efficiency
- Creativity and innovativeness
- Ethics and professionalism
- Customer focus

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Acronyms

ACECA	Anti-Corruption and Economic Crimes Act
APSEA	Association of Professional Societies in East Africa
CBL	Capacity Building Levy
CCK	Communications Commission of Kenya
CDF	Constituency Development Fund
GTZ	German Technical Co-operation
DAC	Development Assistance Committee
ICT	Information Communication Technology
IPPMT	Internal Performance Management Tool
JKUAT	Jomo Kenyatta University of Agriculture and Technology
KACC	Kenya Anti-Corruption Commission
KBC	Kenya Broadcasting Corporation
KCC	Kenya Cooperative Creameries
KIPPRA	Kenya Institute of Public Policy Research and Analysis
KISM	Kenya Institute of Supplies Management
LATF	Local Authority Transfer Funds
LGA	Local Government Authority
MCA-TP	Millennium Challenge Account – Threshold Program
MOU	Memorandum of Understanding
MSEs	Medium and Small Enterprises
NEMA	National Environment Management Authority
OECD	Organization for Economic Cooperation and Development
PE	Procuring Entity
POEA	Public Officer Ethics Act
PPARB	Public Procurement Administrative Review Board
PPCRAB	Public Procurement Complaints, Review and Appeal Board
PPDA	Public Procurement and Disposal Act
PPDR	Public Procurement and Disposal Regulations
PPOAB	Public Procurement Oversight Advisory Board
PPP	Public Private Partnership
SIDA	Swedish Agency for International Development
SPMA	Supplies Practitioners Management Act
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

FORWARD BY THE CHAIRMAN OF THE ADVISORY BOARD

On behalf of the Public Procurement oversight Advisory Board, it is my great pleasure and privilege to present to you the Authority's Annual Report for 2008/2009 Financial Year. The release of this report is in fulfilment of the requirements of Section 20 of the Public Procurement and Disposal Act, 2005.

Background

Kenya is now steadily on a journey towards becoming a prosperous middle income country by the year 2030. The vehicle to deliver Kenya's new development goal is 'Vision 2030'. The role of public procurement will particularly be critical in realizing the Vision 2030 dream by ensuring the Government gets value for money in delivering Vision 2030's flagship projects.



Mrs Mariamu El-Maawy, Chairman to the Advisory Board

Policy Framework

The landmark in the public procurement reforms was in 2005 when the Public Procurement and Disposal Act, 2005 was enacted by Parliament. Among other things, the Act established a semi-autonomous oversight body, the Public Procurement Oversight Authority (PPOA), Public Procurement Oversight Advisory Board and the Public Procurement Administrative Review Board. It amended all other laws relating to procurement in public entities ensuring that all procurement activities are carried out under the umbrella of the Act thus widening the scope of application of the law and providing a proper basis for enforcement. This marked the beginning of a new procurement dispensation.

Achievements

Overall, a reformed Public Procurement System will be a vehicle for delivering to the Kenyan people such benefits as economic growth and poverty reduction, optimized resource application, commitment control, timely delivery of services and reduction of fiduciary risks to acceptable levels, among others. It is against this understanding that, the Authority has embarked on deepening procurement reforms in Kenya. Consequently, the authority has moved towards ensuring that the Government, procuring entities, suppliers and contractors, as well as stakeholders reap the benefits of reformed public procurement system. To this end, the Authority continued with sensitization and training players in the public procurement system; developed Public Procurement User's Guide and guidelines for potential bidders; piloted Internal Procurement Monitoring Tool in selected entities, reviewed standard tender documents; sector specific manual; and carried out assessments as well as procurement reviews in selected procuring entities. In addition, the Authority is in the process of developing the general public procurement manual.

Equally, to keep in step with the changes and modernization of Public Procurement System just like elsewhere in the world, the Authority has developed an e-procurement strategy

which will guarantee and consolidate value for money gains to be realized through improved efficiency and savings. Further, members of the Advisory and Review Boards and staff visited the United States of America and Canada to learn and benchmark with their respective institutions and systems.

Preparations are at advanced stage for Kenya to host the 2nd East Africa Procurement Professionals' Forum scheduled for Nairobi in August, 2009.

It is worthy to note that under the financial year the Authority was put on performance contracting and it is expected that the Authority prove that it is equal to task.

Challenges

The Authority is aware of the immense challenges that lie ahead including streamlining procurement function; developing the capacity in personnel, procuring entities and suppliers; the strong perception by the public and stakeholders that procurement is riddled with corruption; and achieving value for money. Equally, the Authority is cognizant that Kenyans and stakeholders have a legitimate expectation, a real change in the manner in which public procurement system is managed.

Acknowledgements

The aforementioned achievements would not have been realized without the support of staff, government and players. I would like to express my heartfelt appreciation to the Government of Kenya, development partners, procuring entities; suppliers and contractors, and the public at large for their support in assisting the Authority carry out its mandate. Equally, I would like to thank my board colleagues for their insight and dynamic articulation of the Authority's general policy and strategic direction, which translated into this level of success. Lastly, a word of thanks goes to the Authority staff, for their high degree of commitment and unflinching dedication in the discharge of our mandate, as it is through their efforts, despite the prevailing internal constraints, that Authority has remained steady fast and focused on its goal and vision. In fulfilment of the requirements of section 20 of the Public Procurement and Disposal Act, 2005 and on behalf of the Public Procurement Oversight Advisory Board, I am pleased to present to you the Authority's Annual Report for 2007-2008.



Mariam El-Maawy, Chairman



Patrick Mtange, Vice Chairman



*Anne Waiguru, Alternate to
Permanent Secretary, Treasury*



Kaberere Ndung'u, Member



Veronica Maundu, Member

Members of the Advisory Board



Sam G. Ogutha, Member



Moses M. Muihia, Member



*Lawrence Ngugi, Alternate to
Attorney General*



Betty Maina, Member



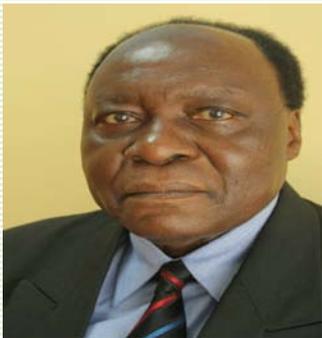
Maurice Juma, Secretary



Paul M. Gachoka, Chairman



Christine A. Ogut, Member



Amb. Charles M. Amira, Member



Judith Guserwa, Member



Sospeter Kioko, Member

Members of the Administrative Review Board



Joshua W. Wambua, Member



Loise G. Ruhiu, Member



Akich Okola, Member



Natasha Mutai, Member



C.R. Amoth, Secretary

STATEMENT OF THE ACTING INTERIM DIRECTOR-GENERAL

I am pleased to present the highlights of PPOA's operations, achievements and challenges for the second year since its official launch.

The Authority continued to design innovative goals and achieve them successfully with the staff seconded from the Ministry of Finance for an additional period of one year.

Notwithstanding the inherent capacity constraints, the Authority made numerous accomplishments in its second year of operation, for instance:

- Development of the first ever Public Procurement User's Guide
- Implementation of the internal procurement monitoring tool in twelve (12) procuring entities
- Reviewed 38 standard tender documents and developed guidelines for bidders
- Sensitized over 337 procuring entities involving over 2,201 trainee's
- Undertaken twenty four (24) assessments in various procuring entities to determine the level of compliance with the procurement and also completed fourteen (14) comprehensive procurement reviews and posted their findings on our website
- Development of a Monitoring and Evaluation framework for operations
- Development of a portal www.tenders.go.ke where information on all procuring entities' tenders can be accessed
- Development of an e-procurement strategy which will pave way for implementation and rolling out the system to selected pilot public entities



*Mr Maurice J.O. Juma, Acting Interim
Director-General*

In addition, the Authority convened several forums, including one for the Professional Societies under the auspices of APSEA and the second stakeholders' forum under the new law, whose response was impressive and from which issues for possible amendments of the Act and the Regulations were obtained as mandated by the procurement law. Some of the proposed amendments have been finalized while others are awaiting submission to the Minister for Finance to be considered for improvement of the procurement system.

Challenges

In seeking to achieve the goals guided by our strategic plan, the Authority continued to encounter several challenges mostly related to our internal capacity constraints as well as in the procuring entities. The Authority has also noted the immense challenge that exists with regard to capacity and plans to overcome its internal constraints through hiring of staff in the short term and lay down strategies to enhance procuring entities capacity in the medium term.

Collaboration

PPOA, as an Oversight Authority, cannot successfully meet its mandate solely. To ensure expedient achievement of the envisaged results, PPOA has been working closely with the Treasury, the Kenya Anti-Corruption Commission (KACC), Transparency International (TI), and the Kenya National Bureau of Statistics (KNBS) and it is our intention to reach out to other institutions that we view as vital stakeholders and partners in the continuous development of the public procurement system. It is our view that these partnerships will go a long way in assisting PPOA to achieve tangible results.

The Authority received generous technical and financial support from Treasury, SIDA through UNDP, GTZ, the Millennium Challenge Account - Threshold Program (MCA-TP) through USAID, and, the Public Financial Management Reforms Programme (PFMR). For instance, through the support of MCA/USAID project, members of the Advisory and Review Boards and staff visited the United States of America and Canada in a bid to benchmark with their respective institutions and systems.

Financial Statement

The Financial Statement of Public Procurement Oversight Authority (PPOA), have been prepared for the financial year ending 30th June 2009. The amount received from the Government was 80% of total income at Kshs200 million. A grant contributed Kshs47.8 million, equivalent of 19% of total income. Other income comprise of a grant appeals fees, preliminary objection fees, sale of Administrative Review Board decisions and sale of tender documents. Total expenditure for the period was Kshs224.6 million with recurrent expenditure at 78% and development expenditure at 22% of total expenditure.

Internal Audit Function

The Internal Audit department provided a reasonable and independent assurance and consultancy to the Director General, Senior Management and the Finance & Administration Committee of the Advisory Board. The department assisted the Authority to accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes in all departments.

Appreciation

In closing, I wish to thank the Advisory board and the Review Board and the entire staff of the Authority for their valuable contributions towards the realization of positive results which are focused on improvement of the public procurement system in Kenya and a successful inaugural year.

PART I: BACKGROUND

Section 1: Introduction

1.1 Establishment of Authority

The Public Procurement Oversight Authority (PPOA) is established by s.9 of the Public Procurement and Disposal Act, 2005 and is mandated to spearhead reforms in the public procurement system through enforcement, capacity building and advisory services.

1.2 Mandate of the Authority

Section 9 of the Act confers the Authority with the following functions:

- a) to ensure that the procurement procedures established under the Act are complied with;
- b) to monitor the public procurement system and report on the overall functioning of it in accordance with section 20(3)(b) and present to the Minister such other reports and recommendations for improvements as the Director-General considers advisable;
- c) to assist in the implementation and operation of the public procurement system and in doing so:
 - i) to prepare and distribute manuals and standard documents to be used in connection with procurement by public entities
 - ii) to provide advice and assistance to procuring entities
 - iii) to develop, promote and support the training and professional development of persons involved in procurement; and
 - iv) to issue written directions to public entities with respect to procurement including the conduct of procurement proceedings and the dissemination of information on procurements; and
 - v) to ensure that procuring entities engage procurement professionals in their procurement units.
- d) to initiate public procurement policy and propose amendments to the Act or to the regulations; and
- e) to perform such other functions and duties as are provided for under the Act

1.3 Structure

1.3.1 The Public Procurement Oversight Advisory Board

The Public Procurement Oversight Advisory Board is established by Section 21. Further, Section 22(1) of the PPDA, 2005, as amended by Section 77 of the Finance Act, 2007, provides for an Advisory Board comprised of 12 members, namely, nine members nominated by the specified institutions/bodies and appointed by the Minister, the Permanent Secretary to the Treasury, the Attorney General and the Director-General, with the latter as the Secretary of the Board. The Advisory Board is mandated to elect one of its nominated members to be the Chairman of the Advisory Board and another of its nominated members to be its Vice-Chairman.

The current members of the board are:

	Member	Position	Nominating Body
1.	Mariam El-Maawy	Chairman	Architectural Association of Kenya
2.	Patrick Mtange	Vice Chairman	Institute of Certified Public Accountants of Kenya (ICPAK)
3.	Anne Waiguru	Member	Alternate to Permanent Secretary/Treasury
4.	Kaberere Ndung'u	Member	Institute of Surveyors of Kenya
5.	Veronica Maundu	Member	Institution of Engineers of Kenya
6.	Moses M. Muihia	Member	Kenya Federation of Master Builders
7.	Sam G. Ogutha	Member	Institute of Certified Public Secretaries of Kenya
8.	Betty Maina	Member	Kenya Association of Manufacturers
9.	Lawrence Ngugi	Member	Alternate to Attorney General
	Robert Hunja	Secretary, Retired 31 August 2008	PPOA
10.	Maurice Juma	Secretary, Appointed 1 September 2008	PPOA

The Advisory Board's functions are:

- a) to advise the Authority on the exercise of its powers and the performance of its functions;
- b) to approve the estimates of the revenue and expenditures of the Authority;
- c) to recommend the appointment or termination of the Director-General in accordance with the Act;
- d) to perform such other functions and duties as are provided under the Act

1.3.2 The Public Procurement Administrative Review Board

Section 25 of the Act establishes the Public Procurement Administrative Review Board (PPARB) as a continuation of the Public Procurement Complaints, Review and Appeal Board (PPCRAB) which had been established by the Exchequer and Audit (Public Procurement) Regulations, 2001. Section 25(2) and Regulation 68(1) provide the composition and membership of the Review Board comprising of six members nominated by the specified institutions/bodies and appointed by the Minister, three other members appointed by the

Minister, and a Chairman appointed by the Minister from among the persons appointed from the specified organizations. The Secretary to the Review Board is appointed by the Director-General from amongst the staff of the Authority in accordance with Regulation 68(3). The current members of the board are as indicated below:

	Name	Position	Nominating Body
1.	Paul M. Gachoka	Chairman	Law Society of Kenya
2.	Sospeter Kioko	Member	Kenya Association of Manufacturers
3.	Christine A. Ogut	Member	Institution of Engineers of Kenya
4.	Charles M. Amira	Member	Minister
5.	Judith Guserwa	Member	Central Organization of Trade Unions
6.	Joshua W. Wambua	Member	Institute of Certified Public Secretaries of Kenya
7.	Loise G. Ruhui	Member	Minister
8.	Akich Okola	Member	Minister
9.	Natasha Mutai	Member	Architectural Association of Kenya
10.	C.R. Amoth	Secretary	Director-General, PPOA

The Review Board has the mandate to receive and deliberate on complaints from candidates who claim to have suffered, or risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by the Act, 2005 and/or the Regulations, 2006. The Review Board can also review an order of the Director-General or review the DG's/Advisory Board's debarment of an individual from participating in procurement proceedings.

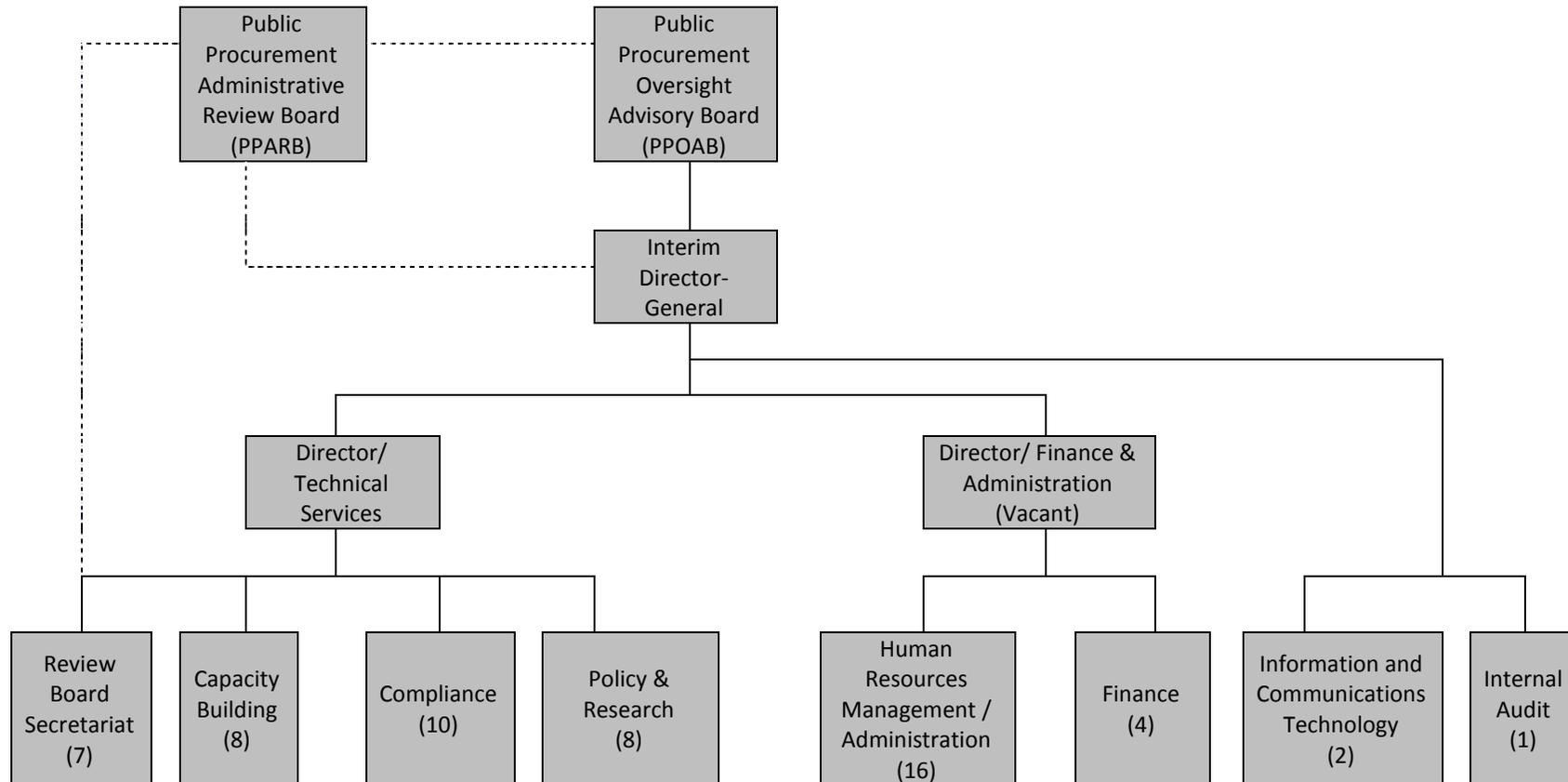
1.3.3 The Authority

Section 8 of the Act establishes the Public Procurement Oversight Authority as a body corporate comprising of the Director-General and staff. The Authority has organized its functions into two directorates, Technical Services (Compliance, Capacity Building, administrative reviews , and Policy & Research functions) and Finance and Administration (Finance, Human Resource Management, Administration and Procurement functions). Two functions, Internal Audit & Information and Communications Technology, report administratively to the Director, F&A, but functionally to the Director-General.

1.3.4 Organizational Structure

The organizational structure of the Authority is as shown below. This structure is under review as the optimal staff complement is being determined.

Organizational Structure



PART II: ACTIVITIES OF THE AUTHORITY

Section 2: Compliance

The Authority is mandated to ensure compliance with the Act in accordance with s.9(a) and to monitor the public procurement system and report on its overall functioning as provided in s.9(b). Progress against these functions is reviewed against the broad themes used by the Authority to organize its work, namely, procurement inspections, mandatory reporting by procurement entities, and, follow ups on assessments and on Review Board orders.

Strengthening PPOA's capacity to enforce compliance with the law

A two days training on monitoring and evaluation (M&E) was organized/conducted by ARD consultants (under the MCA-TP/USAID project - component I) on 7-8 August, 2008. The staff also received training on risk management in procurement (organized by the Crown Agents in Nairobi).

Inspections

The Authority assessed the level of procuring entities' level of compliance with the Act in several ways as described below.

Procurement assessments:

In accordance with s.49(a), the Authority selected a number of public entities so as to conduct a two-day assessment on each of the PEs' procurements. Thirty one procuring entities were assessed during the year with 21 comprising part of the 3rd wave of the Authority's Rapid Results Initiative while the other ten were part of the routine schedule. The agencies assessed included 14 Town Councils, five Municipal Councils, three County Councils, three State Corporations and two colleges. Others were a CDF Committee, a water company, a High School and a University.

Procurement reviews:

The Authority also selected various procuring entities for more rigorous assessments named procurement reviews. Five reviews were carried out during the year covering three Ministries – Energy, Health and Roads – as well as two State Corporations – KEMSA and NEMA.

Investigations:

One investigation was conducted involving the Kenya Pipeline Co. in accordance with section 102(1) of the Act and the report forwarded to the Ministry of Finance.

Self Assessments

During the Authority's 2nd wave of the Rapid Results Initiative in the second half of FY07-08, a tool for self-assessment by procuring entities titled the Internal Procurement Performance Monitoring Tool (IPPMT) was introduced and pilot tested in collaboration with 12 entities but the reports were released during FY08-09. The pilot entities were: Jomo Kenyatta

University of Agriculture and Technology; Judiciary; The Kenya High School; Ministry of Finance; Ministry of Foreign Affairs; Ministry of Immigration & Registration of Persons; Ministry of Justice, Constitutional Affairs & National Cohesion; National Housing Corporation; OleKejuado County Council; PPOA; Thika Municipal Council; and, Ukulima Sacco.

Mandatory Reporting by PPOA

The Act provides for instances when the procuring entities should submit reports to the Authority. Aspects that procuring entities reported on during the year include: s.36(7) on termination of contracts; s.46(1) on publishing of contract awards above Ksh5m; s.74 and Reg.62(3) on direct procurement; as well as, s.131 and Reg.93(2) on disposal to employees.

Procuring entities did not submit procurement plans or their implementation reports as required by s.26(3)(a) and Reg. 21 and augmented by PPOA guidelines that provide the format of such reports. There were also no reports regarding whether any procuring entity had the recommendations of their disposal committee rejected by their accounting officer in accordance with s.129(6)(b).

Section 3: Capacity Building

Introduction

Mandate: Section 9(c) of the Act mandates the Authority to assist in the implementation and operation of the public procurement system through, among other things, the development, promotion and support of the training and professional development of persons involved in procurement.

Progress against the capacity building programme during the year under review is presented along four broad themes, namely: capacity building needs assessment; training programmes; and, professional development.

Capacity building needs assessment

Part of the German technical assistance to the Government of Kenya was applied by GTZ to engage a consultancy firm, Orgut Consulting AB of Sweden, through international competitive bidding, to carry out a comprehensive capacity audit/situation analysis of the PEs and identify capacity gaps including structures, staffing levels, systems and training, develop a capacity building policy and training programme, and to prepare guidelines on optimal organizational and staffing levels of the procurement units by PEs category. The consultancy produced the first draft of their report and the Authority, as well as the Education Committee of the Advisory Board, provided comments on the same.

In the meantime, the Authority was guided by other capacity building needs assessments including the training needs assessment report by the Jomo Kenyatta University of Agriculture & Technology (Kenya's pioneer of graduate studies in procurement), surveys conducted by the Authority on select agencies as well as procurement personnel training needs identified through training sessions and training work plans. A training programme was been developed and 45 procurement practitioners from both PPOA and other PEs trained (with some courses running beyond the financial year under review).

Training Programmes

The Authority aims to enhance awareness and understanding among the PEs and other stakeholders on the Public Procurement Act and Regulations and Supply Chain Management. The awareness creation is conducted through short (one or two days) training sessions covering the various aspects of the Act and regulations. During the year under review, the training sessions continued to receive generous support of the USAID/MCA-Threshold Project, the German Government through GTZ and the Swedish Government through UNDP.

Scaling up:

In order to scale up the training programme, the Authority drew up terms of reference for contracts to engage consultants to carry out the trainings based on a standardised training programme. The consultancy was advertised through the print media and expressions of interest returned. The Technical Evaluation report had 20 successful bidders and PPOA is in the process of appointing a negotiating team with the bidders.

Personnel trained:

The Authority, with the support of consultants hired in September 2008, trained a total of 4,195 personnel from procuring entities among them 994 women, or 24% of all trainees. As indicated in Fig.3.1, the number of male trainees was higher than female trainees for every quarter of the financial year.

The personnel trained were distributed across a wide spectrum of public procuring entities and the private sector as shown in Table 3.1 below. The key contributors of the trainees were the private sector followed by State Corporations, Ministries and local government authorities. Other organizations included Universities, schools and colleges, CDF committees, hospitals and voluntary service organizations.

Within the procuring entities, the major target groups included all District Procurement Officers and staff of the all local Government authorities (LGAs).

Training materials:

The Authority engaged the Kenya Institute of Education (KIE) to help develop training materials (on the Act, the regulations and on supply chain management) for different stakeholders. The Kenya Institute Education submitted its materials which were validated by the Authority, GTZ and other stakeholders. KIE is expected to incorporate the various comments raised and make final submissions in the next financial year.

The Authority also started a process of hiring consultants to undertake the training using the manual developed by KIE. The contracting and implementation of the training program were to be continued in the next financial year.

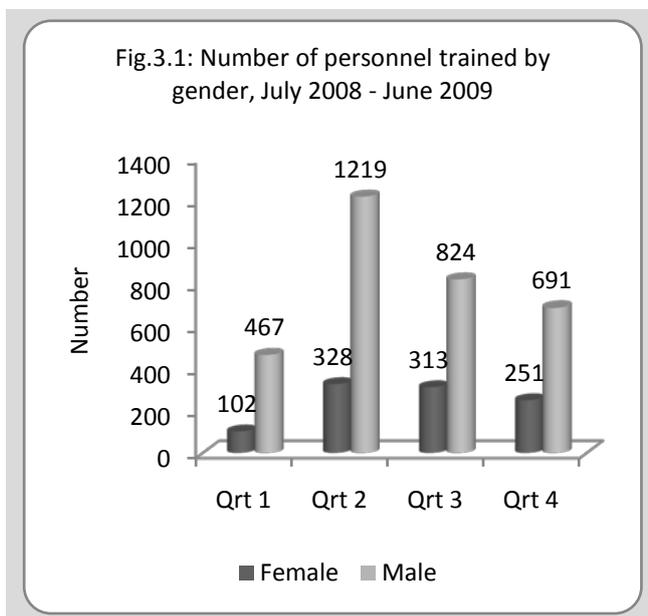


Table 3.1: Trainees by type of organization

Organization	F	M	Total
Suppliers	253	1172	1425
State Corporations	248	525	773
Ministries	179	421	600
Local Govt Authorities	102	408	510
SAGAs	42	220	262
Districts	41	163	204
Other organizations	129	292	421
Total	994	3201	4195

Professional Development

Investments in human capacity: In a bid to enhance the capacity of the procurement officers in procuring entities, the Authority initiated a procurement process towards purchase of computers and their accessories to be supplied to all District Procurement Officers and staff of Local Government Authorities. Recipients of the equipment will also be trained in basic computing skills.

Also under the PFMR, two of PPOA staff enrolled for post-graduate programmes at a local University. Four other officers were identified to attend various short courses on procurement facilitated by ESAMI and the International Renaissance Centre.

The Authority held consultations with the KISM Secretariat in a bid to support the preparation of KISM's Strategic Plan, Regulations for the Supplies Practitioners Management Act, and a comprehensive syllabus for the supplies practitioners.

Databases: The Authority continued to host the Act and regulations on its website for ease of access by people engaged in procurement. The Review Board decisions were also updated during the reporting period and initial efforts undertaken to compile a list of all procuring entities by sector, category and classification. The tenders' website, www.tenders.go.ke provided adverts of ongoing tenders while the www.ppoa.go.ke site contained a listing of contracts awarded by PEs. The latter website was also used to upload all standard tender documents, manuals, procurement reviews and directives such as Circular No.4/2008 of 24 June 2009 on mandatory reporting requirements. All these are inaugural steps in the provision of relevant databases towards enabling public officials make informed decisions.

Networking: The Authority hosted and/or participated in a variety of forums aimed at drawing lessons from a wide range of experts. These included an Inter-Agency Forum focused on information sharing between Government agencies with complimentary agenda, a forum with the Association of Professional Societies in East Africa (APSEA), and, participation at the 2nd East African Procurement Forum that it hosted in Nairobi. A stakeholders' forum was also conducted in Nairobi where the Authority shared experiences, and proposals for the way forward, with a very wide spectrum of experts from procuring entities from around the country.

To enhance its capacity to deliver this mandate, the Authority sponsored three officers from the Capacity Building Department for post-graduate studies at local universities – starting October 2008. As well, two officers attended a training course in Swaziland during the fourth quarter of FY08-09.

Section 4: Policy and Research

The Act mandates the Authority to assist in the implementation and operation of the public procurement system through preparation and distribution of manuals and standard documents, provision of advice and assistance to procuring entities, and, issuance of written directions to public entities with respect to procurement including the conduct of procurement proceedings and the dissemination of information on procurements. The Authority is further mandated to initiate public procurement policy and propose amendments to the Act or to the regulations.

a) Assistance in the implementation and operation of the public procurement system

i) *Preparation and distribution of manuals and standard documents*

Guidelines for framework contracting and procurement of common user items:

The Authority reviewed the draft guidelines submitted by a consultant during the last financial year. The draft was customized and validated by six PEs selected to pilot it through a Rapid Results Initiative (RRI) process. The six entities are the East African Portland Cement, the City Council of Nairobi, Kenya Power & Lighting, Ministry of State for Public Service (DPM), University of Nairobi, and, the Authority. These guidelines were yet to be rolled out nationally by the end of the financial year.

Development of sector-specific users' manuals & records management protocols:

Eight sectors, namely, insurance, Schools, project management, public works, health, co-operative societies, information and communications technology (ICT), and non-intellectual services were identified for the purpose of developing sector-specific users' manuals. The manuals were prepared, validated and disseminated including being posted on the PPOA website, www.ppoa.go.ke. Preparation of the manuals has been supported by the MCA/USAID project.

A contract was also signed between the Authority and the Kenya National Bureau of Statistics towards conducting a market survey aimed to update the average price list. The survey was however delayed by contractual issues.

Other developments:

The guidelines for implementing the capacity building levy were awaiting deliberations at the Advisory Board level.

- *Develop, review and update standard procurement/ tender documents*

Fourteen standard tender documents were revised and posted on the PPOA website for ease of access by stakeholders.

- *Review guidelines for hire of professional services by procuring entities*

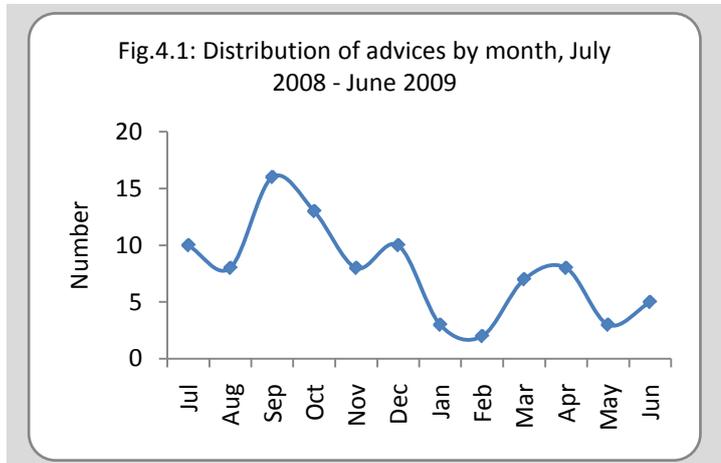
A forum was held with members of the Association of Professional Societies of East Africa (APSEA).

- *Develop preference and reservation scheme guidelines for local contractors and SMEs*

The activity is being funded by the African Development Bank (ADB) and the Authority is waiting for a 'no objection' – approval - from the development partner for the pre-qualified list submitted in July, 2008.

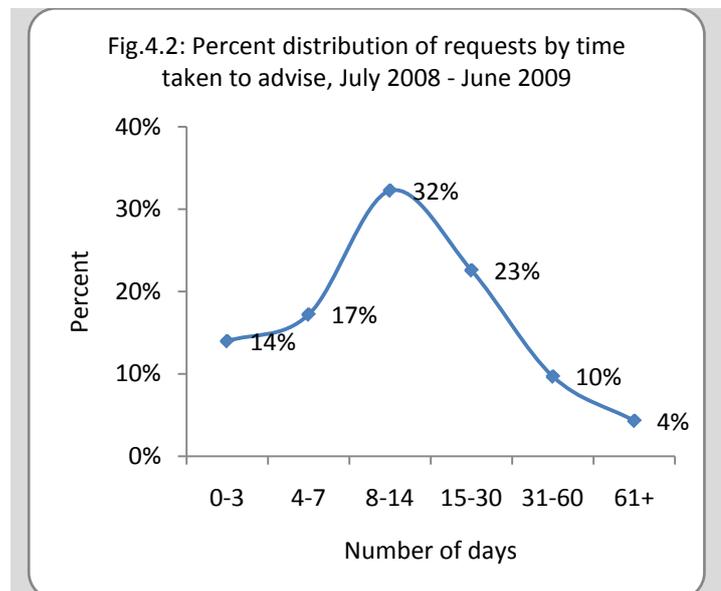
ii) *Provision of advice and assistance to procuring entities*

The Authority provides advice and assistance to procuring entities on request in accordance with section 9(c)(ii) of the Act. The Authority handled 93 requests for advice during the financial year, with peak activity in September 2008 and a downward trend for the rest of the year as shown in Fig.4.1.



The most common requests related to choice of procurement procedure (27%), disposal methods (15%), notification of awards (5%) and procuring agents (3%).

Among those seeking advice on the choice of procurement, 40% sought approval for direct procurement particularly for the hire of consultancy services while eight percent sought to use restricted tender. The Authority provided the requisite advice but in every instance reminded the procuring entity that the choice of procurement method was the prerogative of the PE's tender committee where such applications should be directed subject to adherence to the Act and regulations.



Efficiency of the advisory service:

Fig.4.2 shows that the Authority responded to a third of the requests for advice within a week and another third between one and two weeks. In a small proportion of the cases, 14%, the process took over one month to conclude.

iii) *Issuance of written directives*

During the FY08-09 the Authority issued the following directives:

- PPOA Circular No. 2/2008 of 25 August 2008 - on issuance of bid bonds/tender securities by insurance companies.

- PPOA Circular No. 3/2008 of 26 August 2008 - guidelines on mandatory reporting requirements of procurement activities
- PPOA Circular No. 4/2009 of 24 June 2009 - this circular on mandatory reporting requirements and procurement planning carries revisions to the format for reporting contracts valued at Ksh 5m and above, as earlier provide vide Circular No. 3/2008 of 26 August 2008.

Previously, the Authority issued directions with respect to:

- Publication of contract awards (PPOA Ref. 4/07/Vol.I of 7 January 2007)
- Operationalization of the the Act, 2005 and the Gazettement of Regulations, 2006 (Treasury Circular No. 2/2007 of 18 January 2007).
- Classification of public procuring entities to enable the use of the threshold matrix as contained in the First Schedule of the Regulations, 2006 (Gazette Notice No. 719 of 24 January 2007).

b) Initiate public procurement policy and propose amendments to the Act and regulations

The Authority held a stakeholders forum towards the end of FY07-08 with representation from a wide cross section of people engaged in public procurement. The issues raised during this forum were organized and synthesized into recommendations during the year under review. These recommendations were then forwarded to the Treasury as proposed amendments of the Act and regulations for consideration in the Minister's Budget Speech read in June 2009.

The Authority further prepared itself towards hosting the 2nd Stakeholders Forum by placing adverts on the print media seeking stakeholders' views and comments on priority issues for discussion during the forum to be held early in the next financial year. Invitation letters were also sent out and an attendance register drawn.

The Authority worked with the Investment Secretary's office (Treasury) in the development of Public Private Partnership Regulations as an amendment to the Regulations to be gazetted by the Minister for Finance. In March 2009, the Minister gazetted the Public Procurement and Disposal (Public Private Partnerships) Regulations, 2009 vide Legal Notice No. 38 of 10th March 2009 to guide the process of entering into PPP's pursuant to Section 140 of the Act.

c) Research

The Authority intended to research on emerging issues as well as to estimate the volume of procurement as a proportion of public entities' expenditure. The Authority engaged the University of Nairobi Enterprises (UNES) and entered into a memorandum of understanding to carry out the two research projects concurrently. The UNES submitted a preliminary report towards developing of a public sector procurement policy but the exercise was to continue to the next financial year. There were delays in executing this research due to challenges in obtaining approvals for spending donor funds.

Section 5: Administrative Reviews

The Act provides for an independent procurement appeals mechanism in the form of the Public Procurement Administrative Review Board (PPARB), shortened Review Board. Established by s.25 of the Act, the Review Board is a continuation of the Public Procurement Complaints, Review and Appeals Board (PPCRAB), earlier on established under the Exchequer and Audit (Public Procurement) Regulations, 2001. The Authority is mandated by s.25(3) of the Act to provide administrative services to the Review Board while s.--- mandates the Director-General to appoint one of the Authority's staff as the Secretary to the Review Board. Parties dissatisfied with the decision of the Review Board have the right to seek for Judicial Review. The right to administrative review and the right to judicial review are in addition to any other legal remedy the appellants' may wish to pursue.

The Review Board receives and deliberates on complaints from candidates who claim to have suffered or risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by the Act/Regulations. Also, the Board has the mandate to review an order of the Director-General or to review the debarment of an individual from participating in procurement proceedings.

Capacity of the Review Board

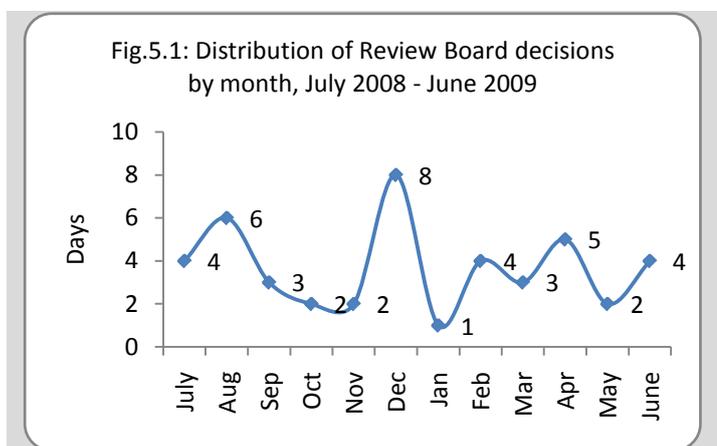
The draft policy guidelines/operations manual for the review process was presented to the members of the Review Board for discussion during a retreat held in Mombasa, 3-6 September 2008. The draft was also presented to the Authority's management team for further validation.

Towards capacity building of the review mechanism the Review Board identified a number of short and long term courses for staff and members of the Board. The courses are: specification requirements in a tender, evaluation of tenders, and, criteria selection; judicial review proceedings, affidavit preparation, and, an overview of company and administrative law; as well as, training on governance.

The ARB also prepared terms of reference towards hiring of a consultancy to undertake a survey on the impact of Board decisions.

ARB Caseload

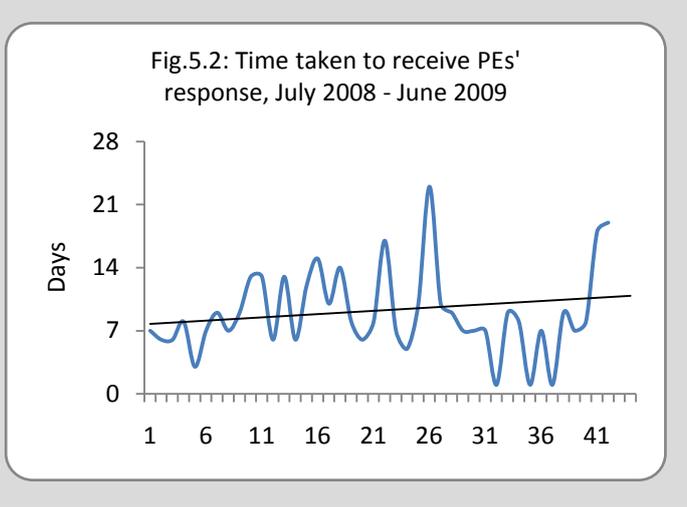
The Board conducted 100 sittings among them 58 hearings and 42 sessions to announce decisions. Forty-eight cases were concluded with four of them being withdrawn by the applicants. The frequency of the 44 cases that went to full hearing is shown in Fig. 5.1, above, which indicates a peak of eight cases in December 2008 and low activity in January 2009 when only one case



was decided on. About two-thirds of the cases affected procurements from Ministries and State Corporations with the latter comprising double the number of cases for the former.

Timeliness of processing requests

The Review Board Secretariat receives applications for review and notifies all parties to the review accordingly. In all but one of the 48 cases applied for, the Secretariat notified the respective procuring entities within one day of receiving the application for review. Procuring entities responded to the notification with the required memoranda but with varying degrees of efficiency. About 40% of the PEs' submitted their memoranda of response within the statutory period of seven days while the rest responded over longer periods extending up to 23 days. The upward slope of the straight line in Fig.5.2, above, indicates a deterioration in the time taken to



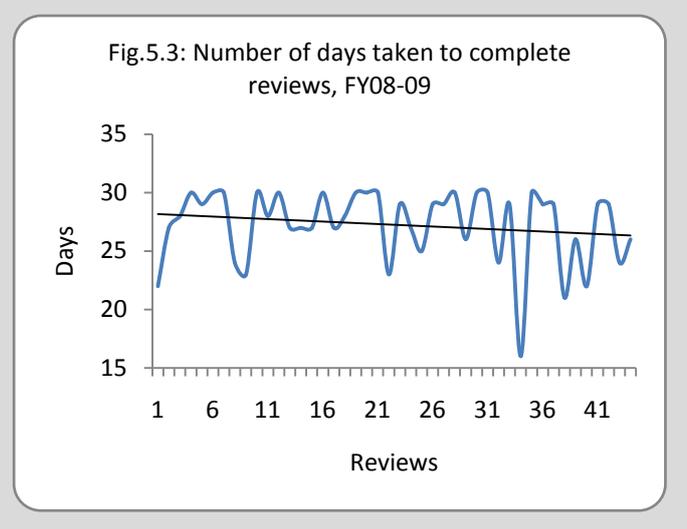
receive PEs' response, which in turn made it difficult for the Review Board to notify other parties in a timely manner. In one out of every five cases, the Board took more than the 14 days provided under Regulation 74(4) to notify all other parties of the filing of a review.

To further improve the efficiency of the review process, the Secretariat received and analyzed applications and prepared reports for briefing the members of the Board before the formal hearings of the reviews – with such briefings being conducted two hours before each formal hearing. The average time taken to the hearing date was 22 days, ranging from 13 days to as 27 days in some cases. This time also mirrors the level of efficiency achieved by the Secretariat in the analyses and preparation of reports.

Communicating decisions

Announcing decisions:

Following the hearing of a review, the Board convenes a follow up session to announce its decision. As already noted, all cases were determined and announced within 30 days as required by the Act. It took an average of 27 days to announce decisions with 50% of the cases taking longer than 28 days. The most common time taken to decide a case was 30 days with a range of 14 days from the shortest time of 16 days. There was a slight improvement in the amount of time taken to make

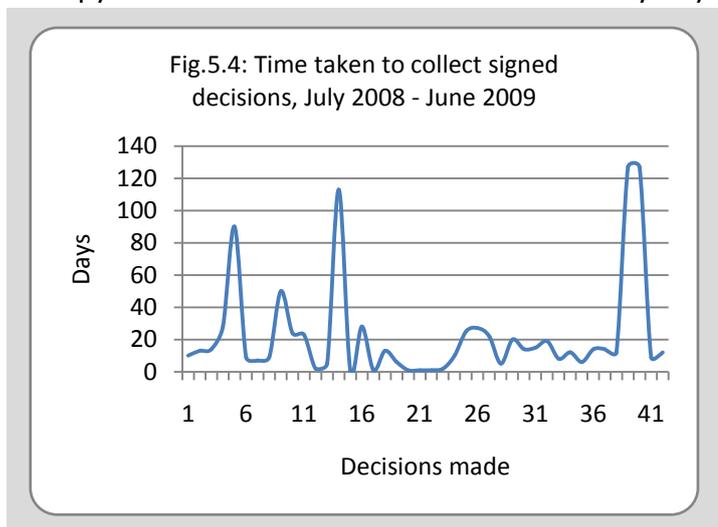


decisions as shown by the downward slope in Fig.5.3 above.

Written decisions:

Following a decision to a review, which is announced verbally in a sitting of the Board, decisions were then written and signed for collection by parties. The written decision carries the date the decision was announced as current practice does not record the actual date of signing. The earliest time that a copy of the written decision was collected by any party to the review is used as a proxy indicator for the time taken to communicate decisions in their written and signed form.

Fig.5.4 indicates the number of days taken from the date a decision is made to the earliest date that the signed is collected by either of the parties. The average time to collection of the decisions was 23 days with 50% of the decisions collected after 13 days. In a few cases the Board announced its decisions and issued written and signed decisions all on the same day.



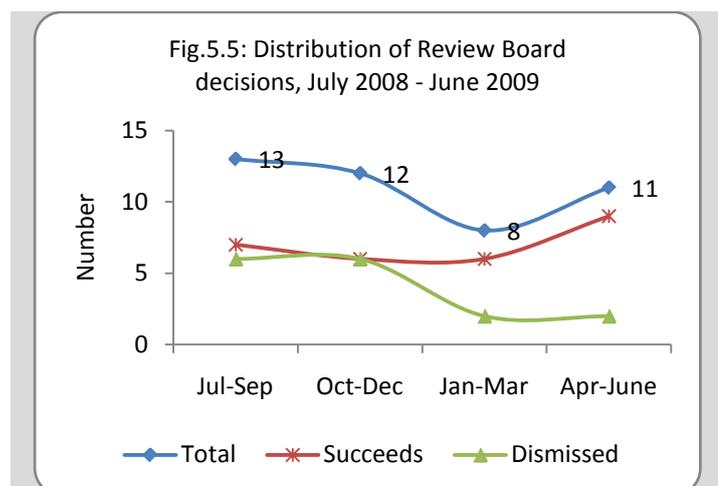
Access to Review Board’s services:

The Authority’s website, www.ppoa.go.ke, continued to host the minimum requirements for lodging an appeal, including formats for how to request for review, notification of review, requirements for review, fees for review and hearing notice. The website also carried the decisions of the Review Board covering the period 2001 to 2007. During the year under review, the Board continued to assemble decisions for digitisation and eventual posting on the website.

Frequency and nature of decisions made

Frequency:

Out of the 48 cases concluded during the year, four were withdrawn. The distribution of the 44 reviews that went to full hearing is shown in Fig.5.5, with twenty-eight of the reviews succeeding while the other 16 were dismissed. A higher percentage of reviews succeeded than those that failed during the second half of the financial year.



There were four preliminary objections (PO) citing faulty filing of reviews. One PO succeeded while three failed. On full hearing, one of the three cases with failed preliminary objections was dismissed while the other two cases succeeded.

Common breaches:

Among the cases that succeeded, a significant 60% of the breaches related to faulty evaluation of tenders while another 10% concerned the failure to simultaneously communicate awards to all bidders. Other breaches were evident in the areas of: advertisement & invitation for tender; review of specifications/terms of reference, procurement method, evaluation criteria, and, potential supply market; award of contracts; as well as, the review process itself.

Specific breaches within the evaluation stage that made the procurement processes to be annulled involved:

- failure to give reasons for termination of tenders
- flawed evaluation processes including using criteria not set out in tender documents
- evaluations done contrary to tender documents
- improper technical and financial evaluations including financial evaluation of a bidder who failed at the technical evaluation stage
- not reading out technical scores
- evaluation of tenders out of time
- failure to award tender to lowest evaluated responsive bidder
- not providing minutes of tender opening
- failure to read prices out loud at tender opening
- failure to apply the preferential margin which would have made the applicant the lowest evaluated bidder
- failure to determine the non-responsiveness of tenders at the preliminary stage

Compliance with Review Board orders:

The Board forwarded its orders to the Authority for the latter to ensure that the same were complied with. Only a few of the affected procuring entities responded to the Authority's enquiries regarding their adherence to the respective orders.

Judicial reviews

Frequency of cases taken to the Judiciary:

The Act provides for judicial review of the Review Board's decisions as an additional right to any other remedy the affected party may pursue. During the period under review, five of the 44 decisions were challenged at the High Court, equivalent to 11% of the Board's decisions. The High Court overruled one appeal and sustained another. One appeal was withdrawn. Two cases from the FY08-09 were pending at the High Court by the time of preparing this report. Cumulatively, there were five cases pending at the High Court at the time of preparing this report.

Nature of the appeals:

The cases taken for judicial review are summarised below:

Review No.	High Court No.	Applicant	Respondent	Grounds for Judicial Review	Status/Decision
24/2008	Misc Appl No. 540 of 2008	De La Rue Currency & Security Print Ltd	KRA	Board rendered its decision on an erroneous interpretation of the Act and the Regulation by misinterpreting & misconstruing S. 39 (a) (b) and S. 39 (8) (b). Board failed to consider the Applicant's submissions on the issue of preference and instead relied upon other provisions of the law not cited by the Applicant.	The High Court overruled the decision of the Board.
2/2009	Misc Appl No. 186 of 2009	Kenya Power & Lighting Company	ARB	Board acted ultra vires against the express provisions of the law by failing to supply the ex parte applicant with a copy of its written decision.	Board's decision was sustained.
42/2008	Misc Appl No. 16 of 2009	China Jiangxi International Kenya Ltd	ARB , Ongata Works Ltd & Kenyatta University	Board had no jurisdiction to hear the review as there was a signed contract contrary to S. 93 (2) (C). Board's decision was ultra-vires, a nullity and illegal.	Applicant withdrew the chamber summons with no order as to costs.
23/2008	Misc Appl No. 530 of 2008	Egerton University	ARB	Board had no jurisdiction/ powers to order the Applicant to extend an expired contract. Directive was unreasonable, against principle, public policy and unlawful.	Notice to show cause why matter should not be dismissed. Stay order is vacated on 31 July 2009. Matter ongoing.
14/2009	Misc Appl No. 294 of 2009	M/S Lins Consult Architects And Interior Designers	ARB	Board in view of the provisions of sec. 76 to 82 of the Act in considering the issue of validity of the tender took into account considerations that were not relevant to the matters before it.	Case is ongoing; it is coming for mention on 17th February, 2010.

Other appeals pending at the High Court but from other financial years

Review No.	High Court No.	Applicant	Respondent	Grounds for Judicial Review	Status/Decision
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2/2008	Misc Appl No. 431 of 2008	Chemelil Sugar Co. Ltd	ARB, Metro Consultants & Guardian Ltd	The Board had no Jurisdiction to hear and annul the award of the PE,- Board had to have realised that the services being tendered for were crucial and re-opening of the tender would frustrate the operations of the PE	Grounds of opposition by board have been filed and the same is pending for directions. Case is ongoing.
10/2008	Misc Appl No. 253 of 2008	Revital Healthcare (EPZ) Ltd	Ministry of Health & 2 Others	1 st and 2 nd respondent acted in bad faith and abused their powers. 2nd respondent failed to take into account relevant considerations in arriving at its decision.	Failure to reach an out of court settlement. Case ongoing for mention.
22/2008	Misc Appl No. 491 of 2009	Supply Chain Management Consortium	ARB & Hetero Drugs Ltd	Board failed to appreciate that the applicant was mandated by the PPDA to reject the interested party's scanned copy of a price schedule as it was not an original by relying on s. 83G of the Kenya Communications Act.	Case is ongoing; it came for Hearing on 1 st February 2010.

Impact of Judicial cases:

Appeals made at the High Court have varied impact on the Act. The most immediate impact is on placing procurements in abeyance for extended periods of time. For instance, the all time average time taken to conclude judicial reviews has been six months with a wide range from one month to some cases taking up to 13 months. When orders of stay are issued and the case takes over one year to finalise, the procurement process is effectively held in abeyance for an equivalent period.

Two cases handled prior to the year under review are presented here to further demonstrate the impact of High Court decisions on the application of the Act:

- In Miscellaneous Application No. 415 of 2007, the High Court ruled that regulations 40, 41 and 42 violate section 41(9) of the Constitution and are therefore void when directed at the Electoral Commission of Kenya (ECK) – being a constitutional body. Within the context of the Act, this leaves aggrieved bidders without a mechanism for lodging their complaints in view of constitutional bodies.
- In Miscellaneous Application No. 1260 of 2007, the High Court ruled against section 36(1) which allow that 'a procuring entity may, at any time, terminate procurement proceedings without entering into a contract' and section 36(6) which offer that 'termination of a procurement proceeding shall not be reviewed by Review Board or a Court'. The procuring entity, the Kenya Civil Aviation Authority, terminated a tender after award but before the signing of the contract with the vendor, Selex Sistemi. The High Court ruled that a procuring entity cannot terminate a contract after notification of award and that the Act cannot restrict one from seeking judicial review.

Improving the legal framework

The Review Board presented the Authority with its proposals for amendments to the Act and regulations. These included requests to:

- amend s.36(1) to state that there can be no termination of procurement proceeding after notification of award
- amend s.36(6) to allow High Court to review termination of a procurement proceeding
- amend s.93(d) and 95 on frivolous appeals, which are mutually exclusive and contradictory, to remove ambiguity
- classify documents that may reveal commercial secrets of a bidder under Reg.74(3) and provide penalty to PEs for delay in submission of details within the 7 days as provided under this regulation
- amend Reg.77(1) to allow preliminary objection to be raised any time prior to hearing of an administrative review as the 5 days currently provided are too restrictive

The Secretariat also analyzed each appeal and isolated breaches beyond those forming part of the complaint. This information was then referred to the Authority for further action in terms of enforcement and issuance of advisories.

Section 6: Information and Communications Technology

The ICT Department provides an Authority wide service covering the full range of ICT functions including design, development, support and maintenance of applications, infrastructure and networks. This section highlights the performance of the department against six broad themes, namely: institutionalizing e-Government (policy/project formulation); access to ICT infrastructure; ICT human resource development; e-applications; ICT user support services; and, quality control.

Institutionalizing e-Government (Policy/project formulation)

The ICT policy framework in Kenya is articulated through the National Information & Communications Technology (ICT) Policy, Ministry of Information & Communications, January 2006 as well as the Kenya Communications (Amendment) Act, 2009 which commenced operations on 2nd January 2009. The Authority published an e-procurement strategy with the support of the Millennium Challenge Account-Threshold Project (MCA-TP) during the financial year.

The e-procurement strategy identified 13 procuring entities to form the cluster for piloting e-procurement, as shown below:

Ministries	State Corporations	Universities	Local Government Authorities
i) ODPM/Ministry of Finance	i) Kenya Medical Supplies Agency (KEMSA)	Jomo Kenyatta University of Agriculture & Technology (JKUAT)	i) City Council of Nairobi (CCN)
ii) Office of the President/ Provincial Administration & Internal Security	ii) Kenya Power & Lighting Co Ltd (KPLC)		ii) Olkejuado County Council
iii) Roads & Public Works	iii) Kenyatta National Hospital (KNH)		
iv) Information & Communications;			
v) Health			
vi) Office of the Vice President & Ministry of Home Affairs			
vii) Immigration & Registration of Persons			

The strategy also identified requirements for the pilot entities and a training session was conducted by the World Bank during the first quarter of the financial year and three consultative meetings held with attendance from all the pilot entities. These meetings were organized under the banner of an Inter-Agency Task Force with representation from pilot entities and other key stakeholders.

Tender specifications and requirements for a help-desk application were prepared but the Authority deferred the tendering process as the African Development Bank (ADB) funds earmarked for this activity were re-allocated to training.

Access to ICT Infrastructure

Connectivity: Since establishing its own offices in early 2008, the Authority embarked on an elaborate ICT programme supported by various agencies including USAID (under the MCA-

TP), the World Bank (through the TCIP), GTZ (under a GoK/German cooperation project) and SIDA through UNDP.

For improved external communication, the Authority installed a bandwidth of up to 1Mbps and also installed a fibre link to PPOA data center. The broadband access serviced by Jamii Telkom can cater for the whole of the Authority's spectrum of website connectivity. All staff have access to the internet and mail.

The Authority developed the intranet earlier started in FY07-08 and provided training on content management for 16 staff. The internal website hosts a collection of documents and internal communication.

Data Centre: The Authority added three new servers, one each for domain, mail and applications. Previously installed were a web server and another dedicated to the Authority's intranet – named *Sebule*. This greatly enhanced the Authority's ICT infrastructure particularly increasing its data storage capacity and mail robustness. The Authority also procured server software and configured the servers to ensure better access to webmail, central use authentication and to ensure operation continuity and security.

To further ensure data recovery and business continuity, the Authority acquired backup drives and media tapes and connected the same to all servers so as to periodically (daily) and automatically backup data. The system also automatically loads new tapes.

Last Mile: All technical staff at the Authority were assigned workstations with access to communication facilities, mainly, a telephone headset, desk-top computer and local area network (LAN) connectivity through data points accessible to all.

Telephone: The Authority started its operations during the FY07-08 by use of mobile analog phones but this changed during the year under review to a PABX connected ISDN, direct lines and mobile networks. The Authority has a cable link with 528 extensions but initially configured 53 extensions to cater for current staff. Digital headsets were issued for all workstations and all staff trained on their usage as a step towards enhancing internal communication.

ICT equipment: To further improve systems and process optimization the Authority bought 23 new desktops and 30 laptops (courtesy of funding from ADB), increasing the number of computers to a total of 60 desk-tops and 38 laptops, or a ratio of about 2 computers per each of the 50 members of staff. Five of the laptops were issued to five Board members. All the desktops and laptops are loaded with new technologies.

ICT Human Resource Development

The ICT department relied on two IT specialists, external service providers, and interns from local training institutions. The in-house specialists trained all technical staff on various aspects, including, intranet usage for all, forty on telephone headset usage (call forwarding) and ten on Windows Vista and MS Office 2007. In addition, two staff trained on telephone operations and another 16 on web content management to enable them take responsibility as site managers.

The World Bank facilitated a six-module tele-conference training on e-procurement for the e-procurement steering committee comprised of staff from the 13 pilot institutions listed above.

ICT specialists constituted about 4% of total staff complement while the combined share of ICT specialists and ICT users was 85% of total employment. There was near absence of advanced ICT users as the Authority was still establishing the relevant systems such as the ERP and the e-procurement applications.

Table 6.1: Staff by category of ICT competency

ICT competency	F	M	Total	Percent
ICT specialists		2	2	4%
Advanced users		1	1	2%
Basic users	19	22	41	79%
Non users	2	6	8	15%
Total	21	31	52	100%

e-Applications

Anti-virus: To ensure data security, all client computers were protected by updated anti-virus while servers were protected through a firewall. The anti-virus is automatically updated when connected to the internet.

Messaging applications: A tender advertisement for messaging applications did not attract any responsive bidder and was recommended for re-advertisement.

Enterprise Resource Planning (ERP) Application: The tender process for an ERP supplier was initiated and a firm awarded the contract. By end of the financial year, requirement and system analysis had been done, a steering committee appointed and application development started. The process continues to the next financial year.

e-Procurement software: Specifications for seeking expressions of interest (EOI) were prepared during the third quarter, advertised during the fourth quarter and bids received and evaluated. Potential suppliers were selected but the Request for Proposal (RFP) stage was to continue to the next financial year.

Other applications: Requirement definition and technical specification documents were developed for departmental productivity tools and a document management system but there were no funds to enable the Authority go to tender.

ICT Support Services

The ICT department discharged its responsibility for distributing and maintaining desktop hardware, software, and multimedia resources. By assisting staff in the appropriate use of technology, the department provided the primary point of contact for end-user support, and offered a wide range of services including management of computing equipment and software, technology training as well as spearheading ICT policy development.

The Authority relied on a combination of internal staff and external support service on an as-needed basis in terms of obtaining ICT services. External support was mainly in the form of maintenance contracts and the Authority relied on a pre-qualification list to source vendors as ICT suppliers were few. The PABX contract catered for a monthly health check and service on call while the internet service level agreement made it possible for the installation of a redundant wireless link to PPOA to ensure no downtime.

Quality control

The Authority aimed to undertake annual and ad hoc upgrades of its website. A web requirement document was prepared to reflect the e-procurement strategy and a supplier hired to develop the site. The business processing portal, www.tenders.go.ke, was launched during the 3rd quarter of the financial year, and carries updates of tender advertisements by procuring entities. A tender advert circular was issued and there has been daily posting of tender advertisements from public procuring entities as well as quarterly posting of contract awards above Ksh5 million as reported by the entities.

PART III: EXEMPTIONS AND VARIATION OF PROCEDURES

Section 7: Specially Permitted Procurement Procedures

The Authority is mandated to provide guidance and report on each procurement for which a procurement procedure was specially permitted under section 92 by way of listing such procurements. In specially permitting a procedure, the Authority may exempt the procedure from the application of a provision of the General Procurement Rules (Part IV of the Act) or vary the application of such a provision. There were six requests under this provision during the year under review from the following agencies.

- Kenya Wildlife Service,
- Ministry of Nairobi Metropolitan Development,
- Ministry of State for Defence,
- Ministry of Trade
- Moi University, and,
- Ministry of Foreign Affairs

The Kenya Wildlife Service:

KWS had previously advertised for investors to form public-private-partnerships in the development of tourism facilities aiming to quadruple tourism GDP contribution, raise international visitors to 3m by 2012, raise average spend per visitor and increase hotel beds from 40,000 to at least 65,000. The bid were non responsive and the KWS now requested to be permitted to select and interest high-end investors for the partnership. The request was granted and the procuring entity advised to pursue a creative approach in accordance with section 31(7) of the Act.

Ministry of Nairobi Metropolitan Development:

The Ministry requested for permission to apply a design competition implemented in a two stage process towards development of a model/conceptual spatial plan for the Nairobi Metropolitan Region. The Authority granted permission noting that the process would allow more innovation leading to a competitive design.

Ministry of Trade:

The Ministry request to be permitted to apply a design competition for the development of AGOA Conference logo. The request was approved noting that a design competition will lead to identification of the logo.

Ministry of State for Defense:

The Ministry sought to repair helicopter components and noted that such repair can only be done by a few identified aviation firms overseas. The request was approved conditionally with the Ministry required to submit to PPOA the detailed report of how the process was concluded.

Moi University:

The University intended to increase student enrolment by leasing teaching premises at Yala Township from a person appointed to its Senate. The Authority held that the request amounts to doing business with a public servant contrary to section s. 33(1)(b). The request was denied.

Ministry of Foreign Affairs:

The Ministry requested for a specially permitted procedure for the acquisition of Chancery and High Commissioner's residence on account of property market conditions and behaviour. The Authority held that the transaction does not qualify as special and instead referred the procuring entity to other provisions of the Act, specifically sections 72 and 85.

PART IV: PROMOTION OF LOCAL INDUSTRY

Section 8: Preferential Bias to Local Participation

Sections 2(f) and 20(3)(d) of the Act mandates the Authority to facilitate and report on the promotion of local industry and economic development. Potential measures include application of preferences and reservations and the targeting of candidates such as disadvantaged groups, micro, small and medium enterprises or any other prescribed category.

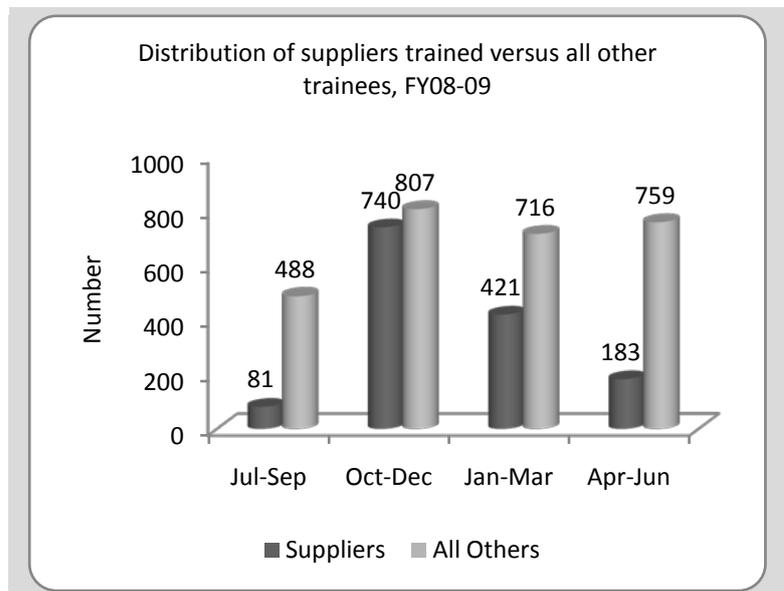
During the year under review, the Authority conducted sensitization programmes for 1,425 suppliers with a higher participation of suppliers during the second and third quarters. This number was equivalent of 34% of all the 4,195 persons trained. The private sector participants were skewed in favour of men with women contributing only 18% of the total number of suppliers trained.

A majority (57%) of the suppliers were sensitized on the Act and the regulations while another 34% participated in the bidders' workshop. Other courses offered to the private sector players related to:

- Insurance services
- Training of consultants for undertaking procurement reviews
- General manual on procurement

The bidders' workshops attracted participants from around the country with 4 sessions in Nairobi and one session each at Eldoret, Kisumu, and Mombasa towns.

The Authority also held meetings with the Association of Professional Societies in East Africa (APSEA) in a bid to share experiences and challenges with respect to public procurement and its legal framework.



PART V: ASSESSING THE PROCUREMENT SYSTEM

Section 9: Overall Functioning of the Public Procurement System

The public procurement system is said to be well functioning if it achieves the objectives of transparency, competition, economy and efficiency, fairness and accountability. Key elements that can be used in determining the extent to which a particular system meets these objectives include having: a clear, comprehensive and transparent legal framework; an institutional framework that differentiates between those who carry out the procurement function and those who have oversight responsibilities; clarity on functional responsibilities and accountabilities for the procurement function; robust mechanisms for enforcement (the means of enforcement include the right to audit by the government of the procurement process and a bidder complaints review mechanism in which bidders have confidence); and, a well trained procurement staff.

A clear, comprehensive and transparent legal framework

The Public procurement regulations were gazetted and the Public Procurement and Disposal Act, 2005 became operational on 1st January 2007.

The Authority organized, hosted and/or participated in various forums where stakeholders shared their experiences on the functioning of the Act and regulations in terms of comprehensiveness, limitations, contradictions, ambiguity, among other issues. These public consultations helped to collect and collate focused issues that then formed the basis for making proposals for amendments to prioritised aspects of the Act and regulations.

Examples of consultative forums include a series of bidders' workshops, stakeholders' forum held towards the end of FY07-08, the 1st East African Procurement Forum (EAPPF) held in Kampala, Uganda, in the last month of the previous financial year, and, the COMESA - Third Meeting of the Committee of Procurement Experts (TCPE) held at the Hilton Hotel, Nairobi, 23-25 July 2008.

An institutional framework that differentiates between those who carry out the procurement function and those who have oversight responsibilities

The Act makes it clear that decision making on the procurement process is fully devolved to the procuring entities in what is seen as the biggest departure from the centralised system where the Central Tender Board housed at the Treasury used to give direction on the specific procurement procedures to be followed by the PEs on every approach to the market.

The responsibilities of the Authority as the oversight agency with no participation in the procurement process is also very clear as is the mandate of the Review Board to receive complaints from aggrieved bidders and make independent decisions on the same.

Clarity on functional responsibilities and accountabilities for the procurement function

The Act and regulations are clear on separation of duties in respect of Accounting Officers, tender committees, procurement committees, evaluation committees, inspection and acceptance committees as well as disposal committees.

Further, the Act and regulations make it mandatory for entities to use open tenders as the preferred method of procurement. Where alternative methods of procurement are used, the tender committee's approval must be obtained. However, there are hitches during implementation. As already noted in Section 4 of this report, over one quarter of the requests for advice made by PEs to PPOA related to choice of procurement procedure and close to one half of those seeking this advice sought approval for direct procurement (40%) and use of restricted tender (8%). This demonstrates that the devolved responsibilities and accountabilities are yet to be internalised by key stakeholders.

There are instances when the procuring entities must report to the PPOA within 14 days, e.g., in the event of direct procurement, termination of a procurement proceedings, disposal to employees, and when an accounting officer rejects the recommendations of the disposal committee. Reporting on contract awards is on quarterly basis, within 14 days of the following quarter. The Compliance Department has an assessment programme that reviews the compliance of PEs and preliminary information indicates that a few procuring entities have made efforts to comply but often times they report after due date and tend to incomplete information.

The Authority issued two circulars on mandatory reporting requirements during the year under review. These were PPOA Circular No.3/2008 of 26 August 2008 and PPOA Circular No.4/2009 of 24 June 2009. Both circulars carried guidelines on how to prepare the annual procurement plans and procurement implementation reports with respect to goods, works and services in furtherance of the provisions of s.26(3)(a) of the Act. Even then, there has been no submission of any procurement plan or implementation report suggesting widespread capacity gaps in the implementation of systematic procurement planning and reporting.

In addition to the loss of data of immense value in the monitoring of efficiency and compliance metrics, the failure by PEs to submit procurement plans/reports also means that the Authority could not analyze and feedback on the extent that public procurement spend has been used for the purposes intended.

Robust mechanisms for enforcement

Section 49(1)(a) of the Act gives the Director-General the right to inspect the records and accounts relating to contracts. The Act also empowers the Controller and Auditor-General to audit the accounts relating to contracts, in accordance with s.49(1)(b), and provides for the Authority to meet the cost of such an audit if the audit was conducted at the request of the Director-General. Section 102 of the Act further mandates the Director-General to

order an investigation of procurement proceedings for the purpose of determining whether there has been a breach of this Act, the regulations or any directions of the Authority.

The Authority carried out 35 inspections (29 assessments, 5 reviews and 1 investigation) during the financial year. The Authority also facilitated the application of a self-assessment tool dubbed the Internal Procurement Performance Monitoring Tool (IPPMT) piloted in collaboration with 12 procuring entities. One investigation relating to the Kenya Pipeline was conducted and the findings forwarded to the Ministry of Finance. The authority did not invoke s.49(1)(b) with respect to audits relating to contracts.

Bidder complaints review mechanism:

The Act provides for aggrieved parties to request for review of decisions in accordance with s.93, s.106, and, s.106. To deliberate on these reviews, s.25(1) of the Act establishes the Administrative Review Board and s.25(3) mandates the Authority to provide administrative services to the Review Board.

During the reporting period, the Review Board was served by nine members - the total number provided by Regulation 68(1). The Board conducted 100 sittings with a cumulative count of members at 480, or an average of 5 members per session. The participation of the Board ranged from three to eight members per sitting.

The Director-General appointed one officer of the Authority as the Secretary to the Review Board in accordance with Regulation 68(3) and also provided administrative services to the Review Board through a secretariat headed by the Secretary. Over the year, the secretariat had three female and four male staff, among them three Case Officers. With 48 reviews concluded during the year, this translates to 16 reviews per Case officer per year.

The Secretariat was able to notify procuring entities immediately an application was filed but the procuring entities responded past due date in two out of five cases, occasioning delays in the notification of all parties in one out of three cases.

Overall, 48 reviews were concluded, with four being withdrawn and 44 going to full hearing. Sixteen of the applications were dismissed by the Board but twenty-eight of the reviews succeeded with the most common breaches relating to the evaluation stage of the procurement proceedings. Five of the decisions of the Board were challenged at the High Court where the decision of the Board was sustained in one case, one decision dismissed and one case withdrawn. Two of the applications were pending before the High Court at the point of preparing this report.

The confidence of bidders with the review mechanism was not empirically assessed as an Authority-wide customer satisfaction survey scheduled for the financial year was terminated and was due for re-tender in the next financial year.

A well trained procurement staff

The Authority continued an awareness programme on the Act and the regulations started the previous financial year. This programme was expanded to cover specific aspects of the

procurement process. The combined share of staff trained on the general procurement manual and the sector specific manuals was 43% of total staff trained.

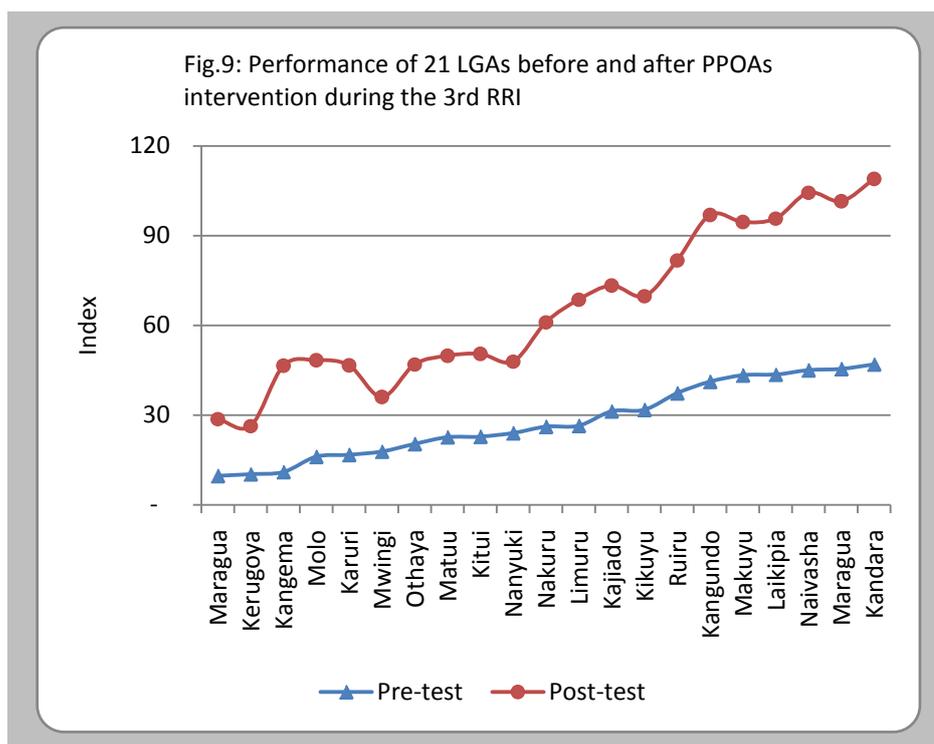
As shown in Table 9, sensitization on the Act and training in procurement including advanced procurement techniques accounted for 45% of the staff. Other important courses offered to staff albeit with fewer numbers covered topics such as: workshop on assisting SMEs, managing the training function, policy and capacity development as well as tailor made training for members of the Advisory Board as well as the Review Board.

Table 9: Distribution of staff trained by type of course

Courses	# staff trained	Percent
Manuals	1,159	43%
Act & regulations	955	35%
Advanced procurement	264	10%
Schools & colleges	78	3%
Framework contracts	73	3%
ICT	61	2%
Others	136	5%
Total	2,726	100%

The potential value of the training programme was demonstrated with the collaboration of 21 local government authorities (LGAs) during the 3rd wave of PPOA's Rapid Results Initiative.

Through a joint effort between the Capacity Building and Compliance departments the LGAs' levels of compliance with the Act and regulations were assessed at the beginning of the programme and action plans for corrective prepared. This was followed by training and review towards the end of the 100-days RRI. The performance



on a standardized index for the pre- and post-test results is shown in Fig.9.2 and s improved compliance levels for all the participating agencies as demonstrated in Fig.9.

Section 10: Regional and International Developments

COMESA meeting in Nairobi

The Authority participated at the Third Meeting of the Committee of Procurement Experts (TCPE) in the Common Market for Eastern and Southern Africa (COMESA) held in Nairobi, 23-25 July 2008. The meeting was organised by the COMESA Secretariat but hosted by the Government of Kenya.

The meeting was attended by a total of 66 delegates, from 16 countries, namely, Burundi, Union of Comoros, DR. Congo, Djibouti, Egypt, Ethiopia, Kenya, Libya, Malawi, Madagascar, Mauritius, Rwanda, Seychelles, Sudan, Zambia and Zimbabwe. Kenya's delegation had 16 members representing a third ($\frac{1}{3}$) of the 48 country delegates. Other delegates were from international organizations including COMESA (10), the African Development Bank (1) and the International Law Institute (3). The meeting was also attended by 4 COMESA reforms programme consultants, two of them Kenyans.

This wide representation brought great opportunities for networking which will be relied on by the delegates for continuous exchange of ideas on public procurement system reforms in their jurisdictions.

Some highlights are listed below:

- The meeting was officially opened by the Chairperson of the Advisory Board, Mrs Maariamau El-Maawy
- Mr Maurice J. Juma, the Authority's Acting Interim Director-General was elected as the Chairman for the Bureau of the Committee of Experts for one year starting July 2008.
- It was noted that the COMESA reforms started in 2002 with the support of the African Development Bank and the World Bank by way of projects aimed at promoting good governance through modernized procurement.

COMESA - Third Meeting of the Committee of Procurement Experts (TCPE) held at the Hilton Hotel, Nairobi, 23-25 July 2008. Some of the participants are seen in the photos below.



From left: Mr Maurice Juma – Acting Interim Director-General, Kenya PPOA; Dr Serge Nguessan - Procurement Expert AfDB; Brian Chigawa - Acting Director of Legal and Institutional Affairs - COMESA Secretariat.



From left: Mr Akich Okola - Consultant; Mr Colas Ziki - Projects Manager EPRCP; and, Ambassador Charles Amira, Member of Kenya's Review Board

- The meeting recommended that member States should take full advantage of the technical assistance and support provided by COMESA and its cooperating partners like the AfDB and the World Bank to ensure quick completion of reforms.
- The Committee further recommended that legal frameworks for public procurement should reflect as much as possible the objectives of regional integration and improvement of national procurement systems which conform to the Directive on COMESA public procurement.
- Mr Stephen Karangizi, the Assistant Secretary General of COMESA (Programmes) noted that the COMESA Enhancing Procurement Reforms & Capacity Project (EPRCP) aims to consolidate public procurement reforms and enhancing COMESA's regional integration efforts by harmonising its Member States' procurement systems. It aims also to enhancing procurement reforms that were commenced under the preceding project (the PPRP).
- The Acting Director of Legal and Institutional Affairs at the COMESA Secretariat, Mr. Brian Chigawa, who is the EPRCP Project Coordinator, said that the project would make significant contribution to the attainment of the aims and objectives of COMESA, especially economic development for the COMESA Region. Mr. Chigawa, also informed the delegates that COMESA shall continue to support her member states in carrying out public procurement.
- Speaking at the closure of the meeting in Nairobi, Ambassador Charles Amira, who is a member of the Public Procurement Administrative Review Board in Kenya, commended the delegates for discussing the draft document on procurement and also on the EC-ESA EPA negotiations on the public procurement which formed the main agenda item for the meeting. He said both exercises would go a long way in ensuring that the business community in the COMESA region gains a substantial part of the public procurement market in order to promote economic growth and also contribute to deepening intra-regional trade and investment.
- And, the AfDB pledged to fund the next Technical Committee of Procurement Experts meeting to be held next year. Dr Nguessan, AfDB's Procurement Expert, told the meeting that the Bank was impressed with the steady progress that member States are achieving and would therefore fund the next meeting which will be broader with the inclusion of other African stakeholders such as ECOWAS. This next meeting is expected to be held at the temporary AfDB Headquarters in Tunis, Tunisia.

USA/Canada Study Tour

The study tour to the United States of America and Canada was organized and financed by USAID Kenya under the Millennium Challenge Account – Threshold Program (MCA-TP). It was implemented by their consultants, ARD Inc., who organized and coordinated the trip.

The purpose of the study tour was to:-

- i) Benchmark Kenya’s Public Procurement system with international best practices;
- ii) Learn about the public procurement systems, including arrangements for bid-challenge and resolution of contract disputes, in the United States and Canada;
- iii) Consider features of these systems that might be adapted for application in Kenya; and
- iv) Strengthen links with public procurement organizations overseas with a view to facilitating continuing arrangements for exchange and the sharing of information.

The delegation comprised three members each from the Advisory Board (PPOAB) and the Administrative Review Board (PPARB), two Senior Management members of staff from the Public Procurement Oversight Authority (PPOA) and a consultant from ARD Inc.

In Canada the delegation visited the Canadian International Trade Tribunal (CITT), Procurement Ombudsman Office and the Public Works and Government Services Canada (PWGSC)

Offices. It is also worth mentioning that there was a courtesy call to Kenya’s High Commission to Canada.



In the United States of

America the delegation was taken through the International Visitor Leadership Program. The Program was arranged by the Bureau of Educational and Cultural Affairs of the Department of State.

In Canada the delegation visited the Canadian International Trade Tribunal (CITT), Procurement Ombudsman Office and the Public Works and Government Services Canada (PWGSC) Offices.

Several areas of interest on matters of public procurement were benchmarked. They included e-procurement framework, bid challenge systems, framework contracting and agreements, small businesses and disadvantaged groups, procurement audits and investigations, contract management and dispute resolution, public procurement policy.

2nd East African Procurement Forum:

The 2nd East African Procurement Forum, scheduled for 19-21 August 2009 at the Hilton Hotel, Nairobi targeted 120 to 220 Procurement professionals and specialists from Kenya, Burundi, Rwanda, Uganda, Tanzania, Somalia and Government of South Sudan as well as experts from development partners (like e.g. USAID, Europe aid and GTZ) and other interested African Countries (e.g., Ghana, Gambia). The Authority was to invite 41 Ministers, 49 Assistant Ministers, and, 51 PSs.

Section 11: Finance and Administration

Funding

The Authority effectively delinked its expenditure controls from the Ministry of Finance as of 1 November 2007 upon an allocation of Kshs202.9 million. The expenditure for the eight month period to 30 June 2008 was Kshs147.4 million representing an absorption capacity of 73% of the budget outlay. Implementation schedules were affected by the post election conflicts early in the year.

Establishment of the Authority's offices

The structures of the Authority were carved out of the Public Procurement Directorate under the Ministry of Finance. Consequently, and as part of enhancing its autonomy from the parent Ministry, the Authority leased its own premises comprising two floors at the National Bank Building, along Harambee Avenue, Nairobi. The space was partitioned and equipped into modern offices during the reporting period. The Authority has a fully structured local area network (LAN) and occupies space in a building that is fibre optic connected in readiness for accelerated use of ICTs towards mid 2009.

Management structures/systems

Besides the expenditure controls mentioned above, the Authority also delinked its payroll and website by establishing its own systems. In the spirit of the Act, the Ministry of Finance seconded 50 staff to the Authority for the full period under review. The Authority took up additional staff, namely, a second internal auditor, 1 casual employee, 2 temporary staff, 2 legal interns and 2 ICT students on industrial attachment. The recruitment for the position of the Director-General commenced but was not concluded during the reporting period.

The Authority developed and implemented its mandate through interim operational structures and policy guidelines including: an interim organizational structure; human resource policies and procedures manual; citizen service delivery charter; board charter; financial policies and procedures; procurement manual; and, training policy.

The Advisory Board established committees, namely: finance and administration; compliance; training and education; and compliance committee. On its part, the Authority delivered its mandate through functional departments and management committees, the latter comprising of tender, procurement, human resource management, and, senior management committees.

The Authority, with the support of UNDP and a consultant, undertook a comprehensive job evaluation which is awaiting approval of the Treasury. A strategic plan was also developed to guide the Authority's programmes over the next five years, 2008-2012. As well, the Authority interpreted its functions through departmental work plans and initiated its corporate social responsibility activities by visiting a Children's home in Karen.

Towards improving staff capacity to undertake their oversight functions, the Authority facilitated the training of six staff to long term courses leading to masters degrees in

procurement; training of Review and Advisory boards' members and; and staff training on short courses such as risk management facilitated by the Institute of Internal Auditors.

Section 12: Financial Statements

REPUBLIC OF Kenya

KENYA NATIONAL AUDIT OFFICE

Insert Controller & Auditor General's letter

CORPORATE INFORMATION

Public Procurement Oversight Authority uniquely has two boards; namely the Advisory Board and Administrative Review Board. The Administrative Review Board deals with complaints and disputes arising from tendering process.

The members of the Advisory Board who served during the year and to the date of this report are shown below:

	Name	Position
1.	Mariam El-Maawy	Chairman
2.	Patrick Mtange	Vice Chairman
3.	Anne Waiguru	Member (Alternate to Permanent Secretary/ Treasury)
4.	Lawrence Ngugi	Member (Alternate to Attorney General)
5.	Sam G. Ogutha	Member
6.	Moses M. Muihia	Member
7.	Kaberere Ndung'u	Member
8.	Veronica Maundu	Member
9.	Betty Maina	Member
10.	Robert R. Hunja	Secretary - Resigned 31 st August 2008
11.	Maurice Juma	Secretary- Appointed 1 st September, 2008

The Members of the Administrative Review Board are:

	Name	Position
1.	Paul M. Gachoka	Chairman
2.	Joshua W. Wambua	Member
3.	Amb. Charles M. Amira	Member
4.	Loise G. Ruhii	Member
5.	Judith Guserwa	Member
6.	Christine A. Ogut	Member
7.	Akich Okola	Member
8.	Sospeter Kioko	Member
9.	Natasha Mutai	Member
10.	C.R. Amoth	Secretary

Principal Place of Business	Auditors	Principal Bankers
National Bank Building, Harambee Avenue, 10 th and 11 th Floor, P.O. Box 58535-00200, Nairobi, Kenya.	Controller & Auditor General, Kenya National Audit Office, P.O. Box 30084-00100, Nairobi, Kenya.	National Bank of Kenya, Harambee Avenue Branch, P.O. Box 41862-00200, Nairobi, Kenya.

REPORT OF THE ADVISORY BOARD MEMBERS

The Advisory Board presents the audited financial statements for the financial year ended 30th June, 2009.

ACTIVITIES

The primary activity of Public Procurement Oversight Authority (PPOA), which was established as a body corporate by the Public Procurement and Disposal Act, 2005 Section 8, is to ensure that the procurement procedures as established under this Act are complied with. The same Act provides in detail in Section 9 the functions of the Authority.

RESULTS

The results for the year are set out on page 7.

MEMBERS OF THE ADVISORY BOARD

Public Procurement Oversight Authority uniquely has two boards; namely the Advisory Board and Administrative Review Board. The Administrative Review Board deals with complaints and disputes arising from tendering process. The present members of the two Boards of Directors are shown on page 2.

AUDITOR

The auditor of the Authority for the financial year was the Controller and Auditor General in line with The Public Audit Act, 2003 and the Public Procurement and Disposal Act, 2005.

On behalf of the Authority

Signed

Maurice J. Juma
Acting Interim Director - General

Dated at Nairobi this

STATEMENT OF MANAGEMENT RESPONSIBILITIES

The Public Procurement and Disposal Act, 2005 provides in Section 20 (1) and (2), for each financial year, the Director-General shall cause four quarterly reports and one annual report to be prepared. It further provides under subsection (2), the Director-General shall submit each report to the Advisory Board and the Minister. Subsection (3) provides that, each annual report shall include the financial statements of the Authority.

The Management is responsible for keeping proper accounting records which disclose with reasonable accuracy the financial position of the Authority in addition to ensuring that the assets are safeguarded.

The Management accepts responsibility for the financial statements, which have been prepared using appropriate policies supported by reasonable and prudent judgments and estimates, in conformity with International Financial Reporting Standards and with the requirements of the Public Audit Act, 2003. The Management is of the opinion that the financial statements give a true and fair view of the state of the financial affairs of the Authority and of its operating results. The Management further accepts responsibility for the maintenance of accounting records which may be relied upon in the preparation of financial statements, as well as adequate systems of internal financial control.

Nothing has come to the attention of the Advisory Board members to indicate that the Authority will not remain as a going concern for at least the next twelve months from the date of this statement.

Signed:

Signed

Maurice J. Juma

Acting Interim Director-General

Date.....

PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

INCOME STATEMENT

FOR THE YEAR ENDED 30th JUNE, 2009

		2009	2008
INCOME			
	Note	Ksh	Ksh
Government grants	2	200,000,000	202,930,455
Other income	3	<u>3,561,552</u>	<u>2,359,898</u>
Gross Income		<u>203,561,552</u>	<u>205,290,353</u>
EXPENDITURE			
Personnel costs	4	94,348,108	72,111,845
Board allowances & expenses	5	35,390,414	37,094,801
Administrative expenses	6	44,566,570	26,952,992
General repairs and maintenance	7	520,801	178,085
Depreciation	8	<u>20,712,756</u>	<u>3,393,759</u>
Total expenditure		<u>195,538,649</u>	<u>139,731,482</u>
SURPLUS FOR THE PERIOD		<u>8,022,903</u>	<u>65,558,871</u>

BALANCE SHEET

As at 30th June, 2009

		2009	2008
		Ksh	Ksh
<u>Assets</u>	<u>Note</u>		
Property & Equipment	8	94,387,495	65,470,219
Cash & Bank	9	13,110,039	14,981,431
Receivables & pre-payments	10	<u>10,996,574</u>	<u>12,869,593</u>
Total Assets		<u><u>118,494,108</u></u>	<u><u>93,321,243</u></u>
<u>Liabilities & Reserves</u>			
Liabilities	11	1,251,308	26,244,425
Capital Grant	12	43,661,026	1,517,947
Revenue reserve	13	<u>73,581,774</u>	<u>65,558,871</u>
Total liability & reserves		<u><u>118,494,108</u></u>	<u><u>93,321,243</u></u>

The Financial Statements on pages 7 to 16 were approved by the advisory board on 26th October, 2009 and were signed on it's behalf by:

Signed

Maurice J. Juma
Acting Interim Director-General

Signed

Patrick Mtange
Advisory Board Member

PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

STATEMENT OF CHANGES IN EQUITY

FOR THE YEAR ENDED 30TH JUNE, 2009

	Revenue reserve	Total
	Ksh	Ksh
Revenue reserve 1.11.2007	0	0
Surplus for the period	<u>65,558,871</u>	<u>65,558,871</u>
Revenue reserve 30.6.2008	65,558,871	65,558,871
Surplus for the period	<u>8,022,903</u>	<u>8,022,903</u>
Revenue reserve 30.6.2009	<u>73,581,774</u>	<u>73,581,774</u>

PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

CASHFLOW STATEMENT

FOR THE YEAR ENDED 30TH JUNE, 2009

		2009	2009
	Note	Ksh	Ksh
Cash generated from operations	14	47,757,013	83,845,409
<u>Cashflows from investing activities</u>			
Purchase of assets	8	(31,783,814)	(20,788,848)
Work in progress	8	<u>(17,846,218)</u>	<u>(48,075,130)</u>
Net cash used in investing activities		<u>(49,630,032)</u>	<u>(68,863,978)</u>
Net Increase /(decrease) in cash		(1,871,392)	14,981,431
Cash & cash equivalents beginning of yr		<u>14,981,431</u>	<u>0</u>
Cash & cash equivalent at 30.6.2009	9	<u>13,110,039</u>	<u>14,981,431</u>

1. ACCOUNTING POLICIES

The financial statements have been prepared in accordance with International Financial Reporting Standards (IFRS).

Basis of preparation

The financial statements have been prepared under the historical cost basis of accounting.

Reporting currency

The financial statements are presented in functional currency, Kenya Shillings (Ksh), which is the prevailing currency within the primary economic environment, and prepared in accordance with the measurement bases prescribed by IFRS. The financial statements have been rounded up to the nearest Kenya shilling.

Foreign currencies

Assets and liabilities in foreign currencies are translated into Kenya shillings at rates of exchange ruling at the balance sheet date. Transactions during the year in foreign currencies are translated at rates ruling at the dates of transactions. Exchange differences are dealt with in the income statement.

Income recognition

Government funding has only been recognized in the period in which it was received.

Grants

Grants from Donors related to assets are accounted for as deferred income and recognized as income on a systematic basis at the rate of depreciation of the assets to which they relate. Activities financed by donors, that are not verifiable, are not recognized in the accounts.

Employee entitlements

Employee entitlements to annual leave are recognized when they accrue to employees. An accrual is made for the liability for annual leave outstanding at the balance sheet date.

Retirement benefit costs

PPOA contributes 31% of basic salary of seconded Civil Servants to Secretary/Director of Pensions, Ministry of Finance.

Male employees also contribute 2% of their basic salary to “Women and Children Pension Scheme”.

PPOA also contributes to National Social Security Fund, a statutory defined contribution pension scheme. PPOA's obligation under the scheme are limited to specific contributions legislated from time to time and are currently limited to a maximum of Sh 200 per month.

Property and equipment

Property and equipment are stated at cost less depreciation.

Depreciation

Depreciation is calculated on a straight line basis at annual rates estimated to write off the cost of property and equipment over their expected useful lives.

The rates per annum are:

Motor vehicles	25.0%
Office equipment and computers	33.3%
Furniture and fittings	12.5%

Cash and cash equivalents

For the purposes of cash flow statement, cash and cash equivalents include short term liquid investments which are readily convertible into known amounts of cash.

Other assets

Other assets have been recognized and carried at original invoice amount less an allowance for any uncollectable amounts.

An estimate for doubtful debts is made when collection of full amount is no longer probable. Bad debts are written off as incurred.

Liabilities

Liabilities are carried at cost which is the fair value of the consideration to be paid in the future for goods and services received, whether or not billed to the Authority.

Taxation

The Authority being a non trading entity is not subject to taxation. No tax is therefore provided in these accounts.

Critical judgments in applying the Authority's accounting policies

IFRS requires the use of estimates and assumptions. It also requires management to exercise its judgment in the process of applying the Authority's policies.

In the process of applying the Authority's accounting policies, management has made estimates and assumptions that affect the reported amounts of assets and liabilities within the next financial year. Estimates and judgments are continually evaluated and are based on historical experience and other factors, including expectations of future events that are believed to be reasonable under the circumstances.

2. GOVERNMENT GRANTS

Government grants represent receipts from treasury during the financial year.

	2009	2008
	Ksh	Ksh
Government grants received from Treasury	200,000,000	202,930,455

3. OTHER INCOME

	2009	2008
	Ksh	Ksh
Income from appeals	2,591,989	1,670,051
Sale of tender documents	141,000	346,000
Other receipts	<u>828,562</u>	<u>343,847</u>
Total	<u>3,561,551</u>	<u>2,359,898</u>

4. PERSONNEL COSTS

	2009	2008
	Ksh	Ksh
Salaries & allowances	81,093,585	63,132,468
Pension contribution	5,051,046	2,873,141
Staff training & welfare	8,051,518	6,106,236
Medical allowances – Ex gratia	<u>151,959</u>	<u> </u>
Total	<u>94,348,108</u>	<u>72,111,845</u>

5. BOARD ALLOWANCES AND EXPENSES

This comprises of all costs related to the boards, which are board allowances, training, travel & accommodation, benchmarking study tours and facilitation costs and allowances for the two boards were as follows;

	2009	2008
	Ksh	Ksh
Administrative Review Board expenses	1,196,117	1,192,994
Administrative Review Board sitting allowances	15,837,122	19,808,552
Administrative Review Board honoraria	685,714	457,142
Advisory Board expenses	4,036,474	3,578,982
Advisory Board sitting allowances	13,177,845	11,142,846
Advisory Board honoraria	<u>457,142</u>	<u>914,285</u>
Total	<u>35,390,414</u>	<u>37,094,801</u>

6. ADMINISTRATIVE EXPENSES

Office rent , rates & utilities	10,317,272	6,449,500
Communication costs	6,891,656	1,829,706
Printing & stationery	1,194,199	2,121,471
Travel & subsistence costs	1,015,203	397,040
Professional fees	14,053,574	1,563,671
Motor vehicle expenses	1,067,355	380,125
Office expenses	3,589,392	663,933
Advertising costs	3,859,603	1,913,204
Other operating costs	2,017,840	11,058,667
Audit fees	500,000	500,000
Bank charges	<u>60,475</u>	<u>75,675</u>
Total	<u>44,566,570</u>	<u>26,952,992</u>

7. GENERAL REPAIRS AND MAINTENANCE

Maintenance cost – office	520,801	178,085
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8. FIXED ASSETS DEPRECIATION SCHEDULE

	Motor Vehicle	Equipment & Computers	Furniture & Fittings	Office Partitions	Work in Progress	Total
<u>Cost</u>	Kes	Kes	Kes	Kes	Kes	Kes
Cost as at 1st July, 2008	18,104,911	1,978,518	705,419	48,075,130	-	68,863,978
Additions	-	26,236,234	5,753,332	(205,752)	17,846,218	49,630,032
Cost 30th June, 2009	18,104,911	28,214,752	6,458,751	47,869,378	17,846,218	118,494,010
<u>Depreciation</u>						
As at 1st July, 2008	3,017,485	323,124	53,150			3,393,759
Charge for the year	4,526,228	9,395,512	807,344	5,983,672		20,712,756
Cumulative 30/6/2009	7,543,713	9,718,636	860,494	5,983,672		24,106,515
Net Book Value						
30th June, 2009	10,561,198	18,496,116	5,598,257	41,885,706	17,846,218	94,387,495

9. CASH AND BANK

	2009	2008
	Ksh	Ksh
Cash		20,000
Bank	<u>13,110,039</u>	<u>14,961,431</u>
Total	13,110,039	14,981,431

10. RECEIVABLES AND PREPAYMENTS

Prepaid rent	9,238,474	10,117,172
Travel advances	1,758,100	13,141
Other receivables	-	<u>2,739,280</u>
Total	10,996,574	12,869,593

11. LIABILITIES

	2009	2008
	Ksh	Ksh
Payable bills	113,785	25,698,458
Leave pay provision	<u>1,137,523</u>	<u>545,947</u>
Total	1,251,308	26,244,425

12. CAPITAL GRANTS

Grants for assets b/fwd	1,517,947	
Grants for assets in the year	47,846,284	1,861,794
Less: Amount transferred	<u>(5,703,205)</u>	<u>(343,847)</u>
Net	43,661,026	1,517,947

13. REVENUE RESERVE

Balance b/fwd	65,558,871	-
Surplus/(Deficit) for year	<u>8,022,903</u>	<u>65,558,871</u>
Revenue reserve c/fwd	73,581,774	65,558,871

14. NOTES TO THE CASHFLOW STATEMENT

Reconciliation of surplus to cash generated from operations

	2009	2008
	Ksh	Ksh
Net surplus	8,022,903	65,558,871
Adjustment for depreciation	<u>20,712,756</u>	<u>3,393,759</u>
Operating surplus before WC changes	28,735,659	68,952,630

Changes in working capital

	2009	2008
	Ksh	Ksh
(Increase)/Decrease in debtors	1,871,392	(12,869,593)
Increase/(Decrease) in creditors	(24,993,117)	26,244,425
Increase in Capital grants	<u>42,143,079</u>	<u>1,517,947</u>
Cash generated from operations	47,757,013	83,845,409

Annual Report & Accounts



2008/09

Issued in accordance with Section 20 of the Public Procurement and Disposal Act, 2005