REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REVIEW NO. 49/2013 OF 6TH DECEMBER, 2013

BETWEEN

ZAPPKASS CONSULTING & TRAINING LIMITED .....APPLICANT

AND

KENYA POWER & LIGHTING
COMPANY LIMITED.....PROCURING ENTITY

Review against the decision of the Tender Committee of Kenya Power & Lighting Company Ltd dated 21st November, 2013 in the matter of Tender No. KP1/5BA/6.1/02/13 for Supervisory Skills Development Training.

BOARD MEMBERS PRESENT

1. Mrs. Josephine W. Mong'are - Member (in the chair)
2. Mrs. Rosemary Gituma - Member
3. Mr. Paul Ngotho - Member
4. Mrs. Gilda Odera - Member
5. Mr. Hussein Were - Member

IN ATTENDANCE

1. Ms Pauline Opiyo - Secretary
2. Mr. Philip Okumu - Secretariat
3. Ms. Judy Maina - Secretariat

PRESENT BY INVITATION

Applicant, Zappkass Consulting & Training Limited

1. Boniface Masinde - Advocate
2. Dr. Peter Murithi - Advocate
3. Salome Ndung'u - Managing Consultant
4. Macie Mambo - Administrative Assistant

Procuring Entity – Kenya Power & Lighting Company Limited

1. Owiti Awuor - Senior Legal Officer
2. Elsie Mworia - Legal Assistant
3. Beryl Zoraima - Legal Officer
4. Reson Oloitiptip - PHRO

Interested Candidate -Total Quality Training Consultants Ltd

1. Michelle Fondo - In-House Counsel

BOARD'S DECISION

Upon hearing the representations of the parties and interested candidates and upon considering the information in all the documents presented before it, the Board decides as follows:

BACKGROUND OF THE TENDER

KPLC'S BUSINESS & OPERATING ENVIRONMENT

The Procuring Entity/ Respondent/ KPLC's core business is the bulk purchase of electric energy, transmission, distribution and supply of electric power in the Republic. KPLC's present staff component is just about 10,565 employees. In order to attract, retain and develop high quality and skilled staff, KPLC conducts several trainings. This also aims at improving staff productivity, performance and boosting morale.

THE PRE-QUALIFICATION EXERCISE

In order to effect the strategy and policy of Trainings, KPLC conducted a Pre-Qualification Exercise *(the Pre-Q)* to procure the services of qualified and competent training firms for various trainings for its staff. KPLC decided to adopt the Open Tender mode of procurement for this Pre-Q Tender Number KP1/5BA/6.1/01/13 Provision of Training Services. Therefore, on 19th March 2013, it advertised for the pre-qualification of various service providers including for Supervisory Skills Development Training. The closing date was extended from its original date of 12th April to 19th April 2013.

CONDUCT & OUTCOME OF THE PRE-Q EXERCISE

A total of 26 firms responded to the Pre-Q. The evaluation process was done in two stages i.e. Preliminary and Technical. 17 firms applied in the field of Supervisory Skills Development Training. 4 were found suitable. Consequently on 4th July 2013 letters of appointment to the Pre-Qualified List for this particular training were sent to Exceptional Management

Consultants, SBO Training Ltd, Total Quality Training Consultants *(Total)* and Zappkaas Training & Consulting Ltd *(Zappkaas)*.

OPENING & CLOSING OF THE SSDT TENDER

Consequently, on 21st August 2013, KPLC invited all 4 pre-qualified service providers to submit their proposals in response to the impugned Tender No. KP1/5BA/6.1/02/13 for Supervisory Skills Development Training. The tender closed as scheduled at 10 a.m. on 16th September 2013. It was opened shortly thereafter on the same date.

RESPONSE TO & OPENING OF SSDT TENDER

All 4 pre-qualified service providers i.e. Exceptional Management Consultants, SBO Training Ltd, Total and Zappkaas responded to the tender by the closing date and time. The Technical Proposals were opened and announced on the closing date in the presence of representatives of bidders and any other person who chose to attend. KPLC's record of opening documents included the Tender Opening Certificate and Attendance List prepared by its Tender Opening Committee. These were duly signed by that Opening Committee and some of the persons including bidders' representatives then in attendance.

Tender Opening Certificate

No.	FIRM'S NAME	NO. OF COPIES	REMARKS
1.	Exceptional Management Consultants	2 Technical copies	One Financial Proposal (Bid Bond)
2.	SBO Training	3 Technical copies	One Financial Proposal

3.	ZappKaas	3 Technical copies	One Financial Proposal
4.	Total Quality Consultants Limited	3 Technical copies	One Financial Proposal

SUBMISSION OF PROPOSALS IN TWO-ENVELOPE SYSTEM

The evaluation and consequent award process was broken into stages. To achieve this, KPLC used a Two-Envelope system. This means that the preliminary and technical evaluation stages would be done separate from the financial evaluation stage. Hence, the bidders were required to submit their bids in two separate envelopes i.e. Technical and Financial Proposals.

PRELIMINARY & TECHNICAL EVALUATION

The Preliminary and Technical Evaluation were conducted by the appointed Evaluation Committee. In order to qualify from one stage to the next out of the three, a bidder had to submit documentation and information that complies with the evaluation process and scoring criteria clearly set out in the Tender Document.

Upon conclusion of the Preliminary and Technical evaluation stages, the Evaluation Committee prepared reports with its recommendations styled as 'Totals and Comments'.

Preliminary Evaluation

No.	NAME OF FIRM	CERT. OF REGISTRATION (At least 4 years)	DIT/NITA Registration	TAX COMPLIANCE & PIN CERT.	DIRECTORS' DISCLOSURE/CBQ	RECOMMENDATIONS
1.	SBO Training Ltd	2003	Yes	Yes	Yes	Responsive
2.	Zaap Kaas Consulting & Training	2004	Yes	Yes	Yes	Responsive
3.	Total Quality Training Consultants Ltd	2001	Yes	Yes	Yes	Responsive
4.	Exceptional Management Consultant	2006	Yes	Yes	Yes	Responsive

<u>TECHNICAL TENDER EVALUATION</u>

TITLE OF THE PROGRAMME: SUPERVISORY SKILL DEVELOPMENT
KP1/5BA/6.1/02/13

Name of Firm	Evaluation Criteria				
	Firm's Experience related to assignment	**Training Approach, Strategy & Methodology**	*Qualification &Experience of Resource Persons (35 Pts)*	**Mechanism for Long - Term Sustenance**	**Totals & Comments**

	firms(5)	**(35)**			**(And tools to be used)**	
1. SBO Training	**(a)** 1. Organizational profile **1** 2. Technical. Capabilities.**2** 3.Experience.**2** **(b)** Number of firms undertaken Mgt for similar skills - 3& above-**15** - Below 3 firms – **0** **Total. 20**	• Approach, Methodology & Overall workplan.**10** • Course objectives. **5** • Course Content. **5** • Delivery Strategy. **5** • Focus on Mission, vision and core values of the company. **10** **Total: 35**	***TEAM LEADER*** • Experience, Atleast 8 years-**8** Less than 8 years. • Qualification. Master degree and above – 7 Below Master's degree PRINCIPAL <u>CONSULTANT 1</u> Experience 5 Years and above –**5**	Less than 5 years. Qualifications Master's degree and above –**5** Below Master's degree PRINCIPAL <u>CONSULTANT 2</u> Experience 5 Years and above-**5** Less than 5 years Qualification Bachelor's degree and above - **5** Below Bachelor's degree **Total 35**	Calls will be made after three months to check how the participants will have complied with the initial action plan • **10** **Total: 10**	**100 Responsive**
2. Zaap Kaas Consulting and Training	**(a)** 1. Organizational profile **0** 2. Technical. Capabilities.**2** 3.Experience.**2** **(b)** Number of firms undertaken Mgt for similar skills - 3& above-**15** - Below 3 firms – **0** **Total. 19**	• Approach, Methodology & Overall workplan.**10** • Course objectives. **5** • Course Content. **5** • Delivery Strategy. **5** • Focus on Mission, vision and core values of the company. **10** **Total: 35**	***TEAM LEADER*** • Experience, Atleast 8 years-**8** Less than 8 years. • Qualification. Master degree and above – 7 Below Master's degree PRINCIPAL <u>CONSULTANT 1</u> Experience 5 Years and above –**5** Less than 5 years	Qualifications Master's degree and above –**5** Below Master's degree PRINCIPAL <u>CONSULTANT 2</u> Experience 5 Years and above - **5** Less than 5 years Qualification Bachelor's degree and above - **5** Below Bachelor's degree **Total 35**	• Ensure that the supervisor continues to conduct his responsibility to his best potential to the expectation of Kenya Power e.g Recognition, Rewarda **Total: 10**	**99 Responsive**

3. **Total Quality Training Consultants Ltd**	**(a)** 1. Organizational profile **1** 2. Technical. Capabilities.**2** 3.Experience.**2** **(b)** Number of firms undertaken Management for similar skills - 3& above- **15** - Below 3 firms – **0** **Total 20**	• Approach, Methodology & Overall workplan.**8** • Course objectives. **5** • Course Content. **5** • Delivery Strategy. **5** • Focus on Mission, vision and core values of the company. **10** **Total 35**	***TEAM LEADER*** • Experience, Atleast 8 years-**8** Less than 8 years. • Qualification. Master's degree and above – **7** Below Master's degree PRINCIPAL <u>CONSULTANT 1</u> Experience 5 Years and above –**5** Less than 5 years	Qualifications Master's degree and above –**5** Below Master's degree PRINCIPAL <u>CONSULTANT 2</u> Experience 5 Years and above - **5** Less than 5 years Qualification Bachelor's degree and above - **5** Below Bachelor's degree **Total 35**	• They will be involved in identifying key result areas and key performance indicators. **Total: 10**	**100** **Responsive**
4. Exceptional Management Consultants	**(a)** 1. Organizational profile **1** 2. Technical. Capabilities.**2** 3.Experience.**2** **(b)** Number of firms undertaken Mgt for similar skills - 3& above- **15** - Below 3 firms – **0** **Total 20**	• Approach, Methodology & Overall workplan.**8** • Course objectives. **5** • Course Content. **5** • Delivery Strategy. **5** • Focus on Mission, vision and core values of the company. **0** **Total 25**	***TEAM LEADER*** • Experience, Atleast 8 years-**0** Less than 8 years. • Qualification. Master's degree and above – **0** Below Master's degree PRINCIPAL <u>CONSULTANT 1</u> Experience 5 Years and above –**0** Less than 5 years Qualifications Master's degree and above –**0** Below Master's degree	PRINCIPAL <u>CONSULTANT 2</u> Experience 5 Years and above - **0** Less than 5 years Qualification Bachelor's degree and above - **0** Below Bachelor's degree **Total 0**	Completion of action plan and evaluation for four levels **10**	**65** **Non Responsive**

These were submitted to KPLC's Tender Committee who gave approval for continuance of the process through opening of the Financial Proposals for the qualified bidders. 3 out of the 4 bidding firms qualified for financial evaluation.

FINANCIAL EVALUATION & AWARD OF TENDER

Based on the financial evaluation and award considerations which contained a formula for determining the successful bidder, Total emerged as the lowest priced evaluated responsive bidder. They were consequently informed of the award of the tender whilst the Applicant, Zappkaas, together with the other unsuccessful bidder were notified of the fact that their bids were not accepted.

Financial Evaluation

	Name of firm	Total Amount inclusive of VAT	Technical Score	Financial Score	Total Score	Rank
1	SBO Training	3,166,800	70%	22%	92%	2
2	Zaap Kass Consultants	3,797,400	70%	19%	89%	3
3	Total Quality Training	2,290,768	70%	30%	100%	1

TENDER COMMITTEE DECISION

The KPLC held a meeting of its Tender Committee on 11th November, 2013 in which it awarded the contract for Supervisory Skills Training to M/s Total Quality Training Consultants at a total cost of Kenya Shillings Two Million, Two Hundred and Ninety Thousand, Seven Hundred and Sixty Eight (2,290,768.00) VAT Inclusive, to train 200 staff.

THE REVIEW -

The Request for Review was lodged by Zappkass Consulting & Training Limited, the Applicant, on 6th December, 2013 against the decision of the Tender Committee of the Kenya Power & Lighting Company Ltd in the matter of Tender No: KP1/5BA/6.1/02/13 for Supervisory Skills Development Training

The Applicant requested the Board for the following orders:

(a) **to nullify the award,**

(b) **to direct the Procuring Entity to award the same to the Applicant,**

(c) **to award the Applicant the costs for this review.**

The Applicant was represented by Mr. Boniface Masinde and Dr. Peter Murithi, Advocates while the Procuring Entity was represented by Mr. Owiti Awuor, Senior Legal Officer. The Interested Party, M/s Total Quality Training Consultants was represented by Ms. Michelle Fondo, in-house counsel.

PRELIMINARY ISSUE

At the Commencement of the hearing, the Board observed that the Procuring Entity had indicated in its memorandum of response that it had a preliminary objection against the request for review. By consent of all parties, the Preliminary Objection by the Procuring Entity was argued

first since the jurisdiction of the Board to hear the case on merits depended on the outcome of the Preliminary Objection.

The Procuring Entity's Preliminary Objection was mainly on the ground that the Request for Review was filed out of time.

The Procuring Entity submitted that the Request for Review was filed late and should have been filed within 7 days of the Procuring Entity's notification of the outcome of the Applicant's tender to the Applicant. It further submitted that the Applicant was expressly aware of the notification of the outcome of its tender on 28th November, 2013 and that the Applicant had sent one of its Officers to collect the said letter on 28th November, 2013. It averred that proof of this collection was evidenced by the entry in the Occurrence Book of its 5th Floor offices at Stima Plaza, Nairobi, which indicated that the Applicant's officer had visited the Procuring Entity's premises on the 28th of November, 2013. It further submitted that its human resource department, which was the lead department in running the tender under review, is located at its 5th floor offices, and that the letters of notification were issued through that department. It submitted that therefore the Applicant's officer had come to collect the said letter from its Human Resource Office.

The Procuring Entity averred that the Public Procurement Administrative Review Board *(the Board)* lacked jurisdiction to hear and determine the Review on this ground. It requested the Board to conclusively determine the issue of jurisdiction through oral and written evidence prior to the hearing of the merits of the Application for Review.

In response to the Preliminary Objection, the Applicant submitted that it had filed the Request for Review within the stipulated time. It submitted that it had received the letter of Notification of Regret on 29th November, 2013 as evidenced by the stamp-date it had stamped on the letter it had received, which indicated the 29th of November, 2013.

The Applicant further submitted that the indication on the Procuring Entity's Occurrence Book that the Applicant's officer had visited the Procuring Entity's premises on 28th November, 2013, was not proof enough that the officer had indeed gone to collect the Letter of Notification. It further submitted that the officer might have been on any other errand within the Procuring Entity's premises on the said date and not necessarily to collect the said letter.

The Applicant stated that the information in the Occurrence Book did not indicate the kind of business or errand a visitor had gone to do within the Procuring Entity's premises. It thus requested the Board to dismiss the Preliminary Objection based on lack of sufficient evidence to prove that the Applicant had collected or received the letter on 28th November, 2013.

The Board has heard the submissions by the Procuring Entity and the Applicant on the Preliminary Objection filed together with the Response to the Request for Review on whether or not the Request for Review was filed within seven (7) days as required under Regulation 73(2)(c)(ii) of the Public Procurement & Disposal Regulations, 2006 as amended by Legal Notice No.106 of 18th June, 2013.

The Board notes that under Section 67(2) of the Public Procurement & Disposal Act, 2005 the law has placed a duty on the Procuring Entity to issue notification of the results of the tender evaluation both to the successful and unsuccessful bidders at the same time. This duty cannot be shifted to the Applicant or other participants in a tender process.

The Board notes that proof of service of notification letters cannot be established through Occurrence Books kept at the entrance of a public building or gate records, especially where the said records do not even reflect the purpose of the visit to the said building.

The Board notes that the Procuring Entity has not demonstrated that it executed that duty placed upon it by the Law and in the absence of a concrete evidence of service, the Board finds that the only date that the said Letter of Notification was served on the Applicant is on 29th November, 2013 as evidenced by a copy of the notification letter presented by the Applicant with a date stamp of the said date.

The Board therefore holds that the Request for Review filed on 6th December, 2013 was filed within time as per by Law required and the Board has jurisdiction to proceed with the hearing of this application on merit.

The Applicant raised six grounds of review which the Board deals with as follows:

Ground 1: - Breach of Sections 31 and 64 of the Public Procurement and Disposal Act 2005(hereafter referred to as "the Act") and Regulation 47 (1) of the Public Procurement and Disposal Regulations, 2006 (hereafter referred to as "the Regulations")

The Applicant averred that the Procuring Entity awarded a contract to Total Quality Training Consultants Ltd, the Successful Bidder, whose financial tender, at Kshs 2,290,768.00, though purportedly be the lowest price, was non compliant as it failed to include financial information required as set out in the Tender Document at Clause 2.4.1(b) and Clause 5 of the financial proposal submission form which required all costs associated with the assignment to be included.

The Applicant further submitted that the Successful Bidder quoted for all the activities except for the reimbursables which it quoted for at zero (o) price but went on to state that the Procuring Entity will meet the costs of the reimbursables. The Applicant averred that in doing so, the Successful Bidder did not conform to the requirements of Clause 2.4.1.(b) of the Tender Document.

The Procuring Entity, in its response denied the allegation that Total Quality Training Consultants Ltd (the Successful Bidder), to which the tender was awarded at the price of Kshs. 2,290,768.00, were non-compliant. It further averred that all tenders that were duly received by the closing date and time were accepted at the tender opening stage and that the Tender Document required bidders to submit prices and costs associated with the assignment including staff remuneration and reimbursables where the latter were a major component of the

assignment. The Procuring Entity averred that bidders were however expressly informed to exclude such costs as were to be borne by the Procuring Entity. These costs were styled as *'Third Party'* costs. The Procuring Entity further submitted that the Successful Bidder complied with this requirement.

The Board has perused the Tender Document and notes that Clause 2.4.1. required the bidders to *"list all costs associated with the assignment including; (a) remuneration for staff (in the field and at headquarters), and; (b) reimbursable expenses such as subsistence (per diem, housing), transportation (international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, surveys, and training, if it is a major component of the assignment. If appropriate, these costs should be broken down by activity. Third party costs to be borne directly by Kenya Power should not be included.*

……………………………………………………………………………"

The Board notes the following provisions of the Act and the Regulations

> Section 31:-
>
> *"(1) A person is qualified to be awarded a contract for a procurement only if the person satisfies the following criteria —*
>
> *(a) the person has the necessary qualifications, capability, experience, resources, equipment and facilities to provide what is being procured;*
>
> ……………………………………………………………………………
>
> ……………………………………………………………………………
>
> *(5) The procuring entity may disqualify a person for submitting false, inaccurate or incomplete information about his qualifications."*

Regulation 47(1):-

"Upon opening of the tenders under section 60 of the Act, the evaluation committee shall first conduct a preliminary evaluation to determine whether-

(a) the tender has been submitted in the required format;

....."

The Board notes that the information being canvassed by the Applicant to support this ground cannot be information in the domain of the Applicant as it relates to another bidder's tender and cannot be public information shared at the tender opening as alleged by the Applicant. The Board further notes that the Applicant has not adduced evidence to support its allegation that the Procuring Entity acted in breach of Sections 2 and 31 of the Act. The Board therefore finds that the Applicant has not established this ground and as such, the Board holds that this ground for Review fails.

Ground 2: - Breach of Regulation 48(2)

The Applicant stated that in permitting the tender of Total Quality Training Consultants Ltd not to quote for certain expenses as required in the Tender Document, the Procuring Entity should therefore have applied the same uniformly to all the bidders. The Applicant further submitted that the financial evaluation carried out by the Procuring Entity was based only on the total prices of the bids and that an evaluation of the breakdown of activities was not carried out.

In its response, the Procuring Entity, submitted that all bidders were treated equally at all stages of evaluation i.e. preliminary, technical and financial and that where any uniformity was required, such was applied to all qualified bidders.

The Board notes that Clause 2.8.3 of the Tender Document provides that *"the evaluation committee will determine whether the financial proposals are complete (i.e. whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors. The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail"*.

48. (2) the classification of a deviation from the requirements as minor under section 64(2) (a) of the Act shall be applied uniformly and consistently to all the tenders received by the procuring entity.

From the foregoing, the Board is satisfied that the Procuring Entity did carry out the evaluation as per the requirements set out in the Tender Document. Having perused the actual financial evaluation report, the Board observes that the evaluation was done using the same parameters for all bidders and that the Applicant's bid was not the lowest evaluated financial bid for the tender. The Board therefore holds that the ground for Review as adduced herein must fail.

Ground 3: - Breach of Section 52(3)(g) and (i) of the Public Procurement and Disposal Act of 2005

The Applicant alleged that the Procuring Entity did not clearly and unambiguously state the criteria for evaluation and award of the contract.

The Procuring Entity, in its response, stated that it complied with Section 52(3)(g) of the Act through the procedures it undertook during the opening of the tenders and that it did not breach the said section.

The Board notes that Section 52(3)(g) and (i) of the Act state as follows:

> *"The tender documents shall set out the following –*
>
> *(g) a statement that those submitting tenders or their representatives may attend the opening of tenders;*
>
> *(i) the procedures and criteria to be used to evaluate and compare the tenders."*

The Board observes that although the Applicant cited a breach of Section 52(3)(g) & (i), it did not provide any statement as proof of the breach. Further, the Tender Document does not provide a provision for conformance to Section 52(3)(g) for the opening of the Technical Proposals but does so for the opening of the Financial Proposals under Clause 2.8.1. of the Tender Document which provided that *"The company shall simultaneously notify the consultants who have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals and stating that the opening ceremony is open to those consultants who choose to attend."*

The Board further observes that the Procuring Entity in its response provided a statement in regard to the allegation that it did not conform to requirements of Section 52(3)(i) of the Act. However, Clauses 2.7 and 2.8 of the Tender Document provided for procedures to be followed to undertake the technical and financial evaluations respectively and these were complied with by the Procuring Entity.

The Board therefore holds that this ground fails.

Ground 4: - Breach of Regulation 73(1) (c) of the Regulations

The adjudication of this ground is covered as a preliminary issue at the commencement of this review.

Ground 5: - Breach of Section 2 (b) of the Act

The Applicant averred that the Procuring Entity has demonstrated unwillingness to be free and fair in its tendering process by inviting trainers for tendering and awarding 90% of the tenders, worth millions of shillings, to one organization, including single sourcing the same organization whose compliance with the Procurement Act and tender document is questionable and most likely incomplete and attempting to punish other tenderers by cancelling contracts without reason e.g. their Contract No: KPI/5BA/6.1 was cancelled in May 2013 when 90% of the work had already been undertaken and no reason or communication was given. The Applicant further averred that participants were called and told not to attend and the venue was cancelled when they were already on the ground on the material training day.

The Procuring Entity in its response states that the allegations are of general nature and that they are not germane to the issue of award of this particular tender. The Procuring Entity further averred that the Board is not properly seized of those issues and hence lacks jurisdiction to entertain the contents therein.

The Board notes that Section 2(b) of the Act states that: -

> *"The purpose of this Act is to establish procedures for procurement and the disposal of unserviceable, obsolete or surplus stores and equipment by public entities to achieve the following objectives –*
>
> *… …*
>
> *(b) to promote competition and ensure that competitors are treated fairly…"*

The Board further notes that the Procuring Entity undertook the procurement process by inviting Request for Proposals from all the four bidders who had been prequalified and shortlisted through a previous prequalification process that was carried out from April, 2013 and finalized in July, 2013. The Board observes that the four bidders responded to the Request for Proposal and were subjected to the same evaluation procedures, with the successful bidder being identified through the same process.

In view of the above, the Board holds that there appears to be no ground for a claim of unfair treatment of either the Applicant or any of the bidders.

Ground 6: – Statement of Loss

The Applicant alleged the award of this contract to the "winning tenderer" will amount to the following:

1. A loss to the Procuring Entity of an un-quantified figure
2. The cost of procuring the bond, the time spent in preparing a comprehensive tender document and the loss of the Applicant's goodwill amounting to Kshs 3,418,768.00, due to the loss of this tender.

The Applicant therefore requested the Board to nullify the award to the Successful Bidder and direct the Procuring Entity to award the same to it and award it the costs for this review.

The Procuring Entity in its response denied that the Applicant has suffered any loss. It submits that the tender was open and competitive and that there was no guarantee that the Applicant's bid would emerge successful. The Procuring Entity further asserts that any costs of tendering were entirely inherent in the risk of competition and should be borne by the Applicant.

The Board has considered the foregoing arguments and notes that, as the Board has held severally, tendering costs are commercial business risks taken by the parties in the course of doing business and as such, each party should bear its own costs.

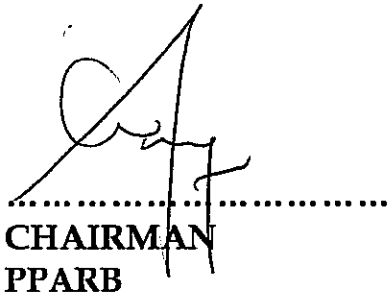
Considering all the above facts and circumstances and in exercise of the powers conferred upon the Board under Section 98 of the Act, the Board makes the following orders:-

(a) The Applicant's Request for Review dated 6th December, 2013 is hereby dismissed.

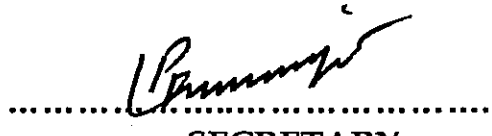
(b) The Procuring Entity's decision to award the Tender for Supervision Skills Development Training to Total Quality Training Consultants Ltd is hereby upheld and allowed to continue.

(c) The Board makes no order as to costs on this Request for Review.

Dated at Nairobi on this 20th day of December, 2013.



CHAIRMAN
PPARB



SECRETARY
PPARB