

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 195/2026 FILED ON 1ST OCTOBER 2026

WESTEND LIMITED.....APPLICANT

VERSUS

**ACCOUNTING OFFICER,
INDEPENDENT ELECTORAL &
BOUNDARIES COMMISSION.....1ST RESPONDENT**

**INDEPENDENT ELECTORAL &
BOUNDARIES COMMISSION.....2ND RESPONDENT**

AND

LITOFINTER COMPANY.....INTERESTED PARTY

Review against the decision of the Accounting Officer, Independent Electoral & Boundaries Commission in relation to Tender No. IEBC/OIT/02/2026-2027 for Supply and Delivery of Ballot Papers, Tactile Folders, Register of Voters and Statutory Election Result Declaration Forms.

BOARD MEMBERS PRESENT

Ms. Alice Oeri	-	Vice Chairperson & Panel Chairperson
Mr. Joshua Kiptoo	-	Member
CPA Alexander Musau	-	Member
Mr. Stanslaus Kimani	-	Member

IN ATTENDANCE

Mr. Philemon Kiprop	- Board Secretary
Mr. Abdalla Issa	- Secretariat

PRESENT BY INVITATION

APPLICANT

WESTEND LIMITED

Mr. Bony Okinyi	Advocate, A. Ngatia & Associates Advocates
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RESPONDENTS

ACCOUNTING OFFICER, INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION

INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION

Mr. Moses Kipkogei	Advocate, G & A Advocates LLP
Mr. Mwangi Kang'u	Advocate, G & A Advocates LLP
Mr. Hassan Nura	Advocate, Garane & Somane Advocates

INTERESTED PARTY

LITOFINTER COMPANY

BACKGROUND OF THE DECISION

The Tendering Process

1. The Independent Electoral & Boundaries Commission (hereinafter referred to as "the Procuring Entity") invited eligible tenderers to submit bids for Tender No. IEBC/OIT/02/2026-2027 for Supply and Delivery of Ballot Papers, Tactile Folders, Register of Voters and Statutory Election Result Declaration Forms (hereinafter referred to as "the subject tender"). The subject tender was scheduled to close and be opened on 1st September 2026.
2. On 14th August 2026, the Procuring Entity issued Addendum No. 1, notifying prospective bidders that a corrected Tender Document had been issued and directing them to disregard the earlier version and rely on the corrected Tender Document when preparing their bids.

Submission of Bids and Tender Opening

3. The procurement proceedings relating to the subject tender were suspended pursuant to Section 168 of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as "the Act") upon the filing of

Request for Review No. 172 of 2026 dated 17th August 2026 before the Public Procurement Administrative Review Board (hereinafter referred to as "the Board") on 17th August 2026.

PPARB APPLICATION NO. 172 OF 2026

4. On 17th August 2026, the Applicant in PPARB Application No. 172 of 2026, Mohammed Ali, through OKC Law Advocates, filed a Request for Review dated 17th August 2026 together with a Statement sworn by him on the same date, which documents constituted PPARB Application No. 172 of 2026. The Applicant sought the following orders:

a) THAT the Applicant's Request for Review be and is hereby allowed.

b) THAT the Respondent's Tender Document, Tender No. IEBC/OIT/02/2026 - 2027, be and is hereby set aside to the extent of the impugned Similar Experience, Financial Capacity and Financial Capability criteria.

c) THAT the Respondent be and is hereby ordered to reframe the Similar Experience criterion so as to permit demonstration of capacity through a Tenderer's cumulative experience in security and/or confidential document printing generally, and not

ballot papers alone, in a manner comparable to the criterion applied in its own tender issued five (5) years prior, or, in the alternative, to expunge the 150-million-ballot-paper single-contract volume threshold in its entirety, the same not having featured in the Respondent's tender documents for the supply of ballot papers during the 2021-2022 electoral cycle.

d) THAT the Respondent be and is hereby ordered not to formulate or apply qualification requirements in a manner that has the effect of unduly limiting competition to, or favoring, any particular tenderer(s), including but not limited to Al Ghurair Printing & Publishing LLC and Inform Lykos.

e) THAT the Respondent be and is hereby ordered to issue a corrected Tender Document for Tender No. IEBC/OIT/02/2026 - 2027 reflecting objective, proportionate and competition-enhancing qualification criteria.

f) THAT the Respondent be ordered to bear the costs of this Request for Review.

g) THAT the Board be pleased to grant such further or other relief as it may deem just and fit in the circumstances.

5. On 3rd September 2026, the Board in exercise of the powers conferred upon it under the Act, issued the following orders in respect of PPARB Application No. 172 of 2026:

- i. The Request for Review dated 17th August 2026 is hereby dismissed.***
- ii. The Accounting Officer, Independent Electoral and Boundaries Commission be and is hereby ordered to clarify and, where necessary, amend the Tender Document to reconcile the provisions relating to the acceptable form of Tender Security under ITT 18.1 of the Tender Data Sheet and Requirement No. 14 under Section III, Stage 1: Preliminary (Mandatory) Evaluation Criteria.***
- iii. The Accounting Officer, Independent Electoral and Boundaries Commission shall extend the date and time for the submission and opening of tenders by a minimum of seven (7) days from the date of this decision, and shall***

communicate the revised date and time to all prospective bidders in accordance with the Act.

iv. Each party shall bear its own costs of the proceedings.

NAIROBI HIGH COURT JUDICIAL REVIEW APPLICATION NO. E329 OF 2026

6. Oilmax Ventures Limited, the 1st Interested Party in PPARB Application No. 172 of 2026, being aggrieved by the Board's decision dated 3rd September 2026, sought leave of the High Court to institute judicial review proceedings. Leave was granted, resulting in the institution of HCJR E329 of 2026. In granting leave, the High Court directed that the substantive Motion be filed within three days from 7th September 2026 and stayed the implementation of the Board's decision in PPARB Application No. 172 of 2026 pending further orders.
7. On 15th September 2026, the High Court issued Directions noting that the substantive Motion had been filed on that date, contrary to the earlier direction that it be filed within three days from 7th September 2026. The High Court consequently held that the matter had been spent, that the stay orders issued in respect of PPARB Application No. 172 of 2026 had lapsed, and directed that the judicial review proceedings be marked as spent and the file closed.

Addenda and Clarifications

8. On 17th September 2026, the Procuring Entity issued Addendum No. 3, which amended various provisions of the Tender document. The Addendum further extended the tender submission and opening deadline to 1st October 2026 at 11:30 a.m. and published consolidated clarifications on eleven themes arising from bidders' queries, several of which amended the Tender Document.
9. On 25th September 2026, the Procuring Entity issued clarifications addressing various issues raised by prospective bidders.

PPARB APPLICATION NO. 190 OF 2026

10. On 25th September 2026, Jango Tek-O Concept Limited, the Applicant herein, through Tali Tali Advocates, filed a Request for Review dated the same day, together with a Statement of the same date by Chrispine Ouma Ojango (hereinafter collectively referred to as "the PPARB Application No. 190 of 2026"), seeking the following orders:

a. THAT the Applicant's Request for Review be and is hereby allowed.

- b. THAT the Tender Document purportedly republished by the Respondent on or about 17th August 2026, together with all subsequent amendments, addenda and/or clarifications founded upon or incorporated into the said republished Tender be set aside.***
- c. THAT the Honorable Board finds and declares that the Respondent's Addendum to Tender No. IEBC/OIT/02/2026–2027 materially alters the substance of the original Tender Document contrary to Section 75(1) of the Public Procurement and Asset Disposal Act, 2015.***
- d. THAT the Respondent's purported Addendum to the Tender document Tender No. IEBC/OIT/02/2026 – 2027 for the supply and delivery of ballot papers, tactile folders, register of voters and statutory election result declaration forms be and is hereby set aside to the extent that it introduces substantive amendments to the original tender.***
- e. THAT the Respondent issues a corrected Addendum to the Tender document Tender No. IEBC/OIT/02/2026 – 2027 for the supply and delivery of ballot papers, tactile***

folders, register of voters and statutory election result declaration forms.

f. A declaration that the Tender Document originally published by the Respondent on or about 11th August 2026 constitutes the Tender Document that was the subject of the procurement proceedings and the subsequent Request for Review.

g. THAT IN THE ALTERNATIVE, the Respondent be directed to withdraw and/or expunge from the Addendum all amendments which materially alter the original Tender Document.

h. THAT the Respondent be ordered to bear the costs of this Request for Review.

i. THAT the Board be pleased to grant such further or other relief as it may deem just and fit in the circumstances.

11. On 2nd October 2026, the Board in exercise of the powers conferred upon it under the Act, issued the following orders in respect of PPARB Application No. 172 of 2026:

i. The Request for Review dated 25th September 2026 is hereby struck out.

ii. The Applicant shall pay to the Respondents costs of the proceedings in the sum of KES 2,000,000.

12. On 1st October 2026, Westend Limited, the Applicant herein, through A. Ngatia & Associates Advocates, filed a Request for Review dated 30th September 2026, together with a Statement of the same date by Andrew Mutua, the Applicant's Director, dated 30th September 2026 (hereinafter collectively referred to as "the PPARB Application No. 195 of 2026"), seeking the following orders:

a) THAT the Applicant's Request for Review be and is hereby allowed.

b) THAT it be declared that the procurement proceedings in Tender No. IEBC/OIT/02/2026-2027 stand suspended under section 168 of the Act pending the determination of this Request, and that the date and time for submission and opening of tenders (1st October 2026) be extended as provided in order (k) below.

c) THAT the Respondent be and is hereby ordered to set aside the impugned Tender Document and to issue a

fresh, consolidated Tender Document giving full effect to the recommendations and findings of this Honorable Board.

d) THAT the 1st Respondent be ordered to state in the Tender Document the scope of the procurement (the quantities, the period over which they will be called off, and the estimated framework value), and to reconsider and, if maintained, justify by reference to that disclosed scope the single-contract experience requirement and the 150 million/21-day production-capacity requirement, in light of the disclosed indicative baseline volume of approximately 30 million ballot papers.

e) THAT the 1st Respondent be ordered to reconcile the Tender Document on the production-capacity criterion by stating (i) whether it is pass/fail or scored; (ii) the stage of evaluation at which it is applied and the evidence required; (iii) whether capacity may be shown across the tenderer's approved facilities; and (iv) the event from which the delivery period runs, and whether the 21-day production period falls within the 30-day delivery period; and to state one closing date and time.

f) THAT the 1st Respondent be ordered to state the quantities and the basis on which prices in Form 4A are to be evaluated, including whether the quantities apply in total or to each of the twelve ballot sizes, and what a "piece" is.

g) THAT the prohibition of joint ventures and consortia, and the statement that the Tender has no provision for sub-contracting, be set aside, and the 1st Respondent be ordered to permit tenderers to participate as joint ventures and consortia (including between Kenyan and foreign entities), subject to joint and several liability of all members and the designation of a lead member, with the experience, capacity and financial resources of the members to be aggregated in the evaluation, and to permit sub-contracting to Kenyan firms on terms stated in the Tender Document.

h) THAT the 1st Respondent be ordered to recast the local content requirement so that (i) it conforms to section 157(8)(b) of the Act and Regulation 158, being measured by reference to contract inputs (supplies, sub-contracts and labor) sourced from Kenyan suppliers and contractors, with taxes, duties and the Capacity Building Levy excluded from the base; (ii) the qualifying costs

include Kenyan supplies, production, finishing and sub-contracted work, and the meaning of "Others" is stated; (iii) the evidence and the stage at which it is verified are stated; and (iv) it may be satisfied through joint ventures, consortia and sub-contracting to Kenyan firms.

i) THAT the 1st Respondent be ordered to state the provision of the Act and Regulations under which margins of preference and reservations are excluded from this Tender or, failing that, to apply Part XII of the Act and the Regulations.

j) THAT the two-tier performance security be set aside, and the 1st Respondent be ordered to require performance security in a single amount not exceeding the limit in section 142 of the Act, calculated on a disclosed contract value, and to remove the automatic forfeiture of the whole security as compensation.

k) THAT the 1st Respondent be ordered to state the rationale for the 980 mm ballot length and the embossing requirement or, in the alternative, to permit functionally equivalent configurations verified through

the sample-testing regime, and to reduce the sample requirement to a level proportionate to the evaluation.

l) THAT the 1st Respondent be ordered to issue a single consolidated corrected Tender Document (or addendum) giving effect to the foregoing orders, to communicate it to all candidates in accordance with section 75 of the Act, and to extend the date and time for the submission and opening of tenders by not less than fourteen (14) days from the date of that addendum.

m) THAT the Respondents be restrained from evaluating tenders under the impugned provisions until the Tender Document has been corrected in accordance with the orders above.

n) THAT the Respondents bear the costs of this Request for Review.

o) THAT the Board be pleased to grant such further or other relief as it may deem just and fit in the circumstances.

13. In a Notification of Appeal and a letter dated 1st October 2026, Mr. Philemon Kiprop, the Board Secretary notified the Respondents of the filing

of the instant Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. Further, the Respondents were requested to submit a response to the instant Request for Review together with confidential documents concerning the subject tender within five days from 1st October 2026.

14. On 1st October 2026, the Board Secretary issued a Mention Notice of even date notifying the parties that the Request for Review would be mentioned on 2nd October 2026 at 2:00 p.m., for purposes of giving directions on its disposal.
15. When the matter came up for mention on 2nd October 2026, Counsel for the respective parties appeared before the Board, save for the Interested Party, which was absent and unrepresented. Having regard to the public interest in the subject procurement and the strict timelines attendant to the electoral process, the Board directed that the Request for Review be heard and determined expeditiously. Accordingly, the Respondents were directed to file and serve their Responses to the Request for Review, the Confidential Documents, and their Written Submissions by 5th October 2026 at 9:00 a.m. The Interested Party was similarly directed to file and serve its Response and Written Submissions by the same date and time. The Applicant was directed to file and serve a Further Affidavit, if any, strictly limited to matters arising from the Responses, together with its

Written Submissions, by 5th October 2026 at 5:00 p.m. The hearing of the Request for Review was scheduled for 6th October 2026 at 10:00 a.m.

16. On 5th October 2026, the Respondents filed a Replying Affidavit sworn on the same date by Mr. Fredrick Muema, the Director of Supply Chain Management of the 2nd Respondent, together with their Written Submissions dated the same day. The Respondents also submitted the confidential documents to the Board pursuant to section 67(3)(e) of the Act.
17. On 5th October 2026, the Applicant filed a Further Affidavit sworn on the same day by Mr. Andrew Mutua.
18. When the matter came up for hearing on 6th October 2026, Counsel for the respective parties appeared before the Board. The Board noted the parties' compliance with the directions issued on 2nd October 2026, save that the Applicant had not filed its Written Submissions. The Applicant's Counsel explained that the omission was occasioned by the late service of the Respondents' Responses.
19. Counsel for the Interested Party applied for an adjournment to enable the Interested Party to file its Response to the Request for Review. The Applicant's Counsel did not oppose the application, stating that the adjournment would also afford the Applicant an opportunity to file its

Written Submissions. The Respondents' Counsel opposed the application on the ground that the Interested Party was not required to await service of the Respondents' Responses before filing its own Response, but ought to have responded upon being served with the Request for Review.

20. Having considered the parties' respective positions, the Board granted the application and directed the Interested Party to file and serve its Response to the Request for Review by 12:00 noon on 6th October 2026. The Board further directed all parties to file and serve their Written Submissions by 8:00 a.m. on 7th October 2026. Consequently, the hearing of the Request for Review was adjourned to 7th October 2026 at 2:30 p.m.
21. On 6th October 2026, the Interested Party filed a Memorandum of Appearance dated 5th October 2026, appointing the firm of Collins Grace & Associates Advocates to represent it in the matter. The Interested Party also filed an Affidavit in Support of the Request for Review, sworn on 6th October 2026 by Antonio Ramon Fernandez, its Managing Director, together with its Written Submissions dated the same day.
22. On 6th October 2026, the Applicant filed its Written Submissions dated the same day.
23. When the matter came up for hearing on 7th October 2026, Counsel for the respective parties appeared before the Board. The Board confirmed

compliance with the directions issued on 6th October 2026, which the parties acknowledged, indicating their readiness to proceed. Before time could be allocated for Counsel to highlight their respective submissions, the Applicant's Counsel, who was holding brief, applied for the matter to be canvassed on the basis of the documents on record, explaining that he was not sufficiently conversant with the matter. Counsel for the Respondents and the Interested Party did not oppose the application. Accordingly, the Board directed that the Request for Review be canvassed on the basis of the pleadings, affidavits, written submissions, and other documents on record.

PARTIES' SUBMISSIONS

Applicant's Submissions

24. The Applicant's Counsel submitted that the impugned Tender Document, Addendum No. 3 and the subsequent Clarifications contained material inconsistencies and amendments that contravened the Act. Counsel maintained that although a procuring entity enjoys discretion to customise its procurement requirements, that discretion must be exercised rationally and consistently with the Constitution and the Act. Reliance was placed on ***PPARB Application No. 21 of 2025 Precision Experts Limited vs Accounting Officer, Kenya Bureau of Standards*** and ***PPARB Application No. 172 of 2026***.

25. On the scope of the review, Counsel submitted that ***PPARB Application No. 172 of 2026*** did not preclude the present Request for Review, as the Applicant was not a party to that proceeding and the complaints raised herein concerned distinct matters arising from subsequent amendments and clarifications. Counsel maintained that the Applicant had demonstrated its intention to participate in the procurement and the loss or risk of loss occasioned by the impugned requirements. Relying on ***James Oyondi t/a Betoyo Contractors & Another vs Elroba Enterprises Limited & 8 Others [2019] eKLR***, Counsel urged the Board to find that the Applicant had the requisite standing. It was further submitted, with reliance on ***Goldfield Insurance Brokers Ltd vs Public Procurement Administrative Review Board & 3 Others (Civil Appeal E137 of 2026) [2026] KECA 711 (KLR)*** and ***Jamari Enterprises Limited vs Public Procurement Administrative Review Board & 2 Others (Civil Appeal E076 of 2026) [2026] KECA 554 (KLR)***, that the Request was neither premature nor time-barred, having been filed within the statutory period following the issuance of Addendum No. 3 and the Clarifications.
26. On the legality of the amendments, Counsel submitted that section 75(1) of the Act prohibited amendments that materially altered the substance of the original tender. The deletion of the margin of preference was cited as a substantive alteration of the rules governing evaluation, which could not be justified by an addendum. Counsel maintained that the directions issued in ***PPARB Application No. 172 of 2026*** were limited to

reconciling the conflicting tender-security provisions and did not authorise unrelated amendments. The Board was consequently urged to direct the restoration or lawful re-making of the impugned provisions, together with an appropriate extension of the submission period.

27. Counsel further submitted that the Tender Document did not sufficiently describe the procurement as required by section 60(1) of the Act and Regulation 102(1) of the Public Procurement and Asset Disposal Regulations, 2020 (Regulations, 2020). In particular, it failed to explain the relationship between the indicative baseline of 30 million ballot papers, the 150 million experience threshold, the figure of 168 million relied upon by the Respondents and the evaluation quantity of 479 for each ballot-paper item. The Estimated Framework Value and the estimated total volume over the framework period were also not disclosed. Relying on ***PPARB Application No. 13 of 2021 Five Blocks Enterprises Limited vs Managing Director, Kenya Bureau of Standards***, Counsel submitted that the omissions undermined transparency and prevented tenderers from adequately understanding the scope of the procurement and the basis of the financial obligations. The Applicant sought disclosure of the relevant estimates and a clear statement of the items, units, evaluation quantities and aggregation methodology.

28. On the capacity and delivery requirements, Counsel submitted that the Tender Document contained conflicting provisions on whether the 21-day production-capacity benchmark was a scored criterion or a mandatory

qualification requirement, the facilities against which capacity would be assessed, the operative delivery trigger and the closing time. These inconsistencies, it was contended, created uncertainty in the preparation and evaluation of tenders. Counsel urged the Board to direct the issuance of a corrected and consistent Tender Document.

29. Regarding joint ventures and subcontracting, Counsel submitted that the blanket prohibition lacked adequate justification and was inconsistent with the Tender Document's express requirement for the involvement of Kenyan firms in the performance of the contract. It was contended that the prohibition, when considered alongside the experience, financial and production-capacity requirements, effectively excluded citizen contractors from meaningful participation. Counsel urged the Board to lift the prohibition subject to appropriate safeguards, including joint and several liability and the designation of a lead member. Alternatively, the Board was asked to require the Respondents to justify the restriction and permit vetted subcontracting by citizen contractors for defined non-core activities.
30. On local content, Counsel submitted that the formula prescribed in Addendum No. 3 did not give effect to section 157(9) of the Act and Regulation 165 of the Regulations, 2020. The formula allegedly included taxes, duties and other charges in the denominator, failed to require sourcing from citizen contractors, restricted qualifying inputs largely to logistics and related services, and did not adequately recognise local production and other qualifying supplies. Counsel maintained that the

formula and its verification requirements ought to be revised to reflect the statutory requirement that foreign tenderers source at least 40 per cent of their supplies from citizen contractors.

31. Counsel further challenged the deletion of the margin of preference, relying on sections 89(f), 155 and 157(8)(b)(ii) of the Act and Regulations 77(2)(d) and 164 of the Regulations, 2020. It was submitted that the margin of preference was distinct from the local content requirement and that compliance with the latter could not replace an independently applicable statutory preference. Counsel contended that the deletion was impermissible under section 75(1) of the Act and sought restoration of the preference and disclosure of the applicable evaluation methodology or, alternatively, the statutory basis and supporting evidence for its exclusion.
32. On performance security, Counsel submitted that the requirement for a KES 200 million framework guarantee, in addition to a 10 per cent security for each call-off, potentially resulted in aggregate security exceeding the ceiling prescribed by section 142(1) of the Act for the same underlying obligation. The Board was urged to require disclosure of the Estimated Framework Value and the basis for computing the framework guarantee, together with appropriate crediting or adjustment of overlapping securities to ensure compliance with the statutory limit.

33. Counsel also challenged the mandatory 980 mm ballot-paper dimension on the ground that the Respondents had not sufficiently justified its necessity or explained why functionally equivalent alternatives would be unacceptable. Further, it was submitted that the detailed sample requirements introduced shortly before the closing date required additional preparation time. Counsel accordingly sought a reasoned justification for the specification or provision for equivalent configurations, together with a reasonable extension of time to enable tenderers to comply with the corrected requirements.
34. On the similar-experience criterion, Counsel clarified that the Applicant did not seek to reopen the finding in PPARB Application No. 172 of 2026 that direct and recent experience in printing security ballot papers at substantial scale was rationally justified. The challenge was limited to the reduction of the look-back period from ten years to five years. Counsel submitted that the shorter period was not adequately justified, particularly given the electoral cycle and the requirement to demonstrate two comparable contracts, and sought restoration of the ten-year period or, in the alternative, a reasoned justification for the five-year restriction.
35. Counsel urged the Board to consider the cumulative effect of the impugned requirements, contending that the restrictions on experience, financial and production capacity, participation through joint ventures and subcontracting, local sourcing and preference collectively undermined the meaningful participation of citizen contractors. The Board was therefore

urged to grant appropriate relief under section 173 of the Act, including correction of the unlawful and inconsistent provisions and issuance of a coherent Tender Document with sufficient time for tenderers to prepare their bids.

Respondents' Submissions

36. The Respondents' Counsel submitted that the Board's decision in PPARB Application No. 190 of 2026, dated 2nd October 2026, concerned the same tender but was dispositive only of the question of locus standi, the Board having found that the applicant therein had not pleaded loss or the risk of loss attributable to a breach of the Act. Counsel relied on ***James Oyondi t/a Betoyo Contractors and another vs Elroba Enterprises Limited and 8 others [2019] eKLR, Civil Appeal No. 131 of 2018***, on the requirement under section 167(1) of the Act that a candidate or tenderer demonstrate the requisite loss or risk of loss. Counsel, however, distinguished the present proceedings on the basis that the Applicant had pleaded its candidate status and alleged prejudice. The Respondents accordingly relied on ***PPARB Application No. 190 of 2026*** as guidance on the statutory threshold, rather than as a determination of the substantive challenges to the tender and Addendum No. 3.
37. Counsel further submitted that the earlier proceedings in ***PPARB Application No. 172 of 2026*** were relevant background but did not bar distinct complaints arising from subsequent disclosures. The clarification

mechanism under the tender document did not immunise an unlawful amendment from review, just as dissatisfaction with a clarification did not, without more, establish a breach of the Act.

38. On the applicable legal standard, the Respondents' Counsel submitted that sections 58, 60 and 70 of the Act, read with regulation 68 of the Regulations, 2020, recognise the procuring entity's responsibility to formulate requirements suited to its procurement needs, subject to Article 227(1) of the Constitution and the statutory principles of fairness, transparency and competition. Relying on ***Republic vs Public Procurement Administrative Review Board; Accounting Officer Kenya Medical Supplies Authority and 2 others (Interested Parties); First Assurance Company Limited (Ex parte) [2023] KEHC 734 (KLR), Celmel Insurance Agency vs Chief Executive Officer, Social Health Authority, PPARB Application No. 74 of 2024, and PPARB Application No. 54 of 2023 Celmel Insurance Agency vs Managing Director, Kenya Electricity Generating Company PLC***, Counsel submitted that mandatory and procurement-specific requirements ought to be respected where they are lawful and rationally connected to the subject matter of the procurement.
39. Counsel also relied on ***James Nyasora Nyarangi and 3 others vs Attorney General [2008] eKLR*** on the need for a rational relationship between a distinction and the objective sought to be achieved. The Respondents maintained, however, that the procuring entity's discretion

was not unfettered and that the impugned requirements had to be assessed against their stated operational justification and their effect on fair competition. Counsel further submitted that the burden of proving the alleged breaches rested with the Applicant, relying on ***Nyakwana vs Ongaro [2015] KEHC 8440 (KLR)***, while acknowledging that an inconsistency apparent from the tender documents could be established from the documents themselves.

40. On the amendments to the tender document, Counsel submitted that section 75 of the Act permitted amendments before the submission deadline, provided they did not materially alter the substance of the original tender. The Respondents maintained that the amendments followed the earlier Board proceedings, inquiries from prospective tenderers and the Procuring Entity's assessment of its operational requirements, without changing the essential nature of the procurement. Counsel urged the Board to examine the substance and competitive effect of each impugned amendment rather than infer illegality from the number of clarifications issued or the fact that the tender document had been amended. The earlier directions concerning tender security neither authorised unlawful amendments in other respects nor precluded the Procuring Entity from making other lawful amendments. Where a material ambiguity or inconsistency was established, Counsel submitted that the appropriate remedy would be a clear and uniform clarification, accompanied by any extension of time required by the Act, rather than

wholesale replacement of the tender or automatic adoption of the Applicant's preferred requirements.

41. The Respondents' Counsel further submitted that the different quantities cited in the tender documents served distinct purposes and did not, merely because they differed, render the procurement scope or financial evaluation defective. The projected general-election requirement of approximately 168 million ballot papers, the indicative baseline of approximately 30 million under the framework arrangement, the 150 million quantity used for qualification and capacity purposes, and the 479 pieces specified for financial evaluation addressed different aspects of the procurement. Counsel maintained that the indicative framework quantity was neither a guaranteed minimum nor, without express wording to that effect, a maximum, and that the production-capacity requirement addressed the ability to meet substantial demand within compressed electoral timelines.
42. The Respondents further contended that Form 4A applied the quantity of 479 pieces to each of the twelve ballot-paper line items for purposes of price comparison, and that the quantity should not be conflated with booklet configuration or the Procuring Entity's projected national requirement. Counsel submitted that section 80(2) and (3) of the Act required evaluation in accordance with the disclosed criteria and objective, quantifiable measures, and that the Applicant had not demonstrated that the different quantities resulted in inconsistent or subjective evaluation.

The three-year pricing obligation was likewise defended as a commercial requirement whose potential risks did not, without more, establish illegality. Counsel nevertheless maintained that the procurement scope, pricing units, evaluation quantities and aggregation methodology had to be sufficiently clear and uniformly applied.

43. On the qualification requirements, Counsel submitted that similar experience and production capacity were distinct criteria, the former assessing prior performance in an assignment of comparable scale and the latter assessing present ability to undertake the required work. The Respondents maintained that the requirement for relevant ballot-paper experience within five years and the single-contract criterion were justified by the scale, security and time-sensitive nature of electoral printing. The terms of an earlier procurement, which had permitted a longer look-back period and broader security-printing experience, did not entitle the Applicant to identical requirements in the present tender.
44. Counsel further contended that the 21-day factory-capacity benchmark and the 30-calendar-day contractual delivery period served different purposes and were not inherently inconsistent, the contractual period being governed by the applicable operational trigger. The Respondents maintained that the replying affidavit explained the existing requirements rather than introduced new evaluation criteria. However, Counsel acknowledged that any inconsistency in the published provisions concerning the assessment stage, pass-or-fail treatment, verification

facilities or delivery trigger would require a clear and uniform clarification before evaluation. Such a correction would not, in itself, justify replacing the experience period, aggregating separate contracts or substituting a different capacity threshold.

45. Regarding the prohibition on joint ventures and subcontracting, the Respondents' Counsel submitted that the restrictions were justified by the sensitivity of electoral materials, the need for direct accountability, preservation of the chain of custody and the risks of fragmented performance. Relying on section 149(1) of the Act, Counsel contended that the Act permitted tender documents to prohibit subcontracting and did not confer an unconditional right to subcontract every public contract. Nor did the inclusion of joint-venture provisions in standard tender documents require the Procuring Entity to permit joint bids or aggregate the experience and resources of several entities in every procurement.
46. Counsel maintained that the participation arrangements adopted in a separate technology procurement did not determine the appropriate structure for the present procurement. The Respondents further submitted that the prohibition had to be construed consistently with the tender's disaster-recovery arrangements and the statutory local-sourcing requirement, while recognising that an arrangement described as local sourcing could, depending on its substance, constitute subcontracting. Counsel opposed compulsory admission of joint ventures and aggregation of members' qualifications, but submitted in the alternative that any

ambiguity concerning the relationship between the prohibition, continuity arrangements and local sourcing could be addressed through a clear and lawful clarification.

47. On the forty per cent sourcing requirement, the Respondents' Counsel submitted that section 157(9) of the Act, read with regulation 165 of the Regulations, 2020, required foreign tenderers in international tendering to source at least forty per cent of their supplies from citizen contractors. Counsel distinguished that obligation from the margin-of-preference provisions under section 157(8)(b) of the Act and maintained that qualifying goods, works, consulting services and non-consulting services could contribute towards compliance. The Respondents relied on the proposed sourcing arrangements for logistics, handling, transport, warehousing, security, insurance, labour, packaging and professional services, supported by cost breakdowns and supplier commitments, as demonstrating the potential for local participation notwithstanding that the principal printing might take place abroad.
48. Counsel submitted that a sourcing plan and binding commitments could demonstrate proposed compliance at the tender stage, with invoices subsequently verifying performance, but acknowledged that the preliminary eligibility requirement could not be deferred until after award. The Applicant's assertion that foreign manufacturers could not meet the requirement was said to lack supporting industry or supplier evidence. Counsel nevertheless maintained that the calculation had to measure

genuine qualifying sourcing on a clear and verifiable basis, and that taxes and duties could not automatically be treated as purchases from citizen contractors. The Respondents therefore urged the Board to preserve the statutory obligation while correcting any demonstrated defect in the calculation or verification mechanism.

49. On local content and margins of preference, Counsel submitted that the two mechanisms served different purposes, the former governing local participation in performance and the latter affecting the comparison of eligible bids. An applicant's Kenyan status or the inclusion of preference provisions in an earlier tender did not, without proof of the applicable statutory conditions, establish an entitlement to a particular preferential adjustment.
50. Counsel relied on section 157(6) of the Act and maintained that the classification of the procurement as an open international tender did not, by itself, exempt it from the applicable provisions of Part XII. The Respondents did not contend that the Procuring Entity could remove a mandatory statutory entitlement through an addendum; rather, they maintained that any applicable preference had to be established and applied in accordance with the law. If the deletion of a preference provision was found unlawful, Counsel proposed a uniform correction of the evaluation provisions, communicated to all prospective tenderers with adequate time to prepare or amend their bids.

51. On security requirements, the Respondents' Counsel distinguished the fixed tender security of KES 40 million from the KES 200 million framework-level guarantee and the ten per cent security applicable to individual call-offs. Counsel submitted that the stated tender-security amount addressed section 61(2)(b) of the Act, subject to compliance with the applicable statutory ceiling. The Applicant's contention that the framework and call-off securities necessarily resulted in an aggregate burden of twenty per cent was said to be unsustainable without examining their respective valuation bases, secured obligations, concurrent exposure and release arrangements.
52. Counsel maintained that an indicative framework value did not constitute a guaranteed purchase commitment and that annual renewal did not, without more, amount to the simultaneous accumulation of separate annual guarantees. However, section 142(1) of the Act remained controlling, and separate instruments could not be used to circumvent the statutory ceiling through duplicate security for the same underlying obligation. Relying on section 142(2) of the Act, Counsel further submitted that seizure of performance security upon the specified failure of contractual execution was not inherently unlawful, provided the statutory and contractual conditions were met. The Respondents therefore opposed abolition of the security arrangement but proposed, in the alternative, that any established overlap be addressed through a reduction, credit or adjustment sufficient to ensure compliance with the statutory limit.

53. On the technical specifications and sample requirements, the Respondents' Counsel submitted that sections 60(1) to (3) of the Act permitted specifications directed at the design, functionality and performance of the required goods, subject to clarity and fair competition. Counsel maintained that the 980 mm ballot-paper requirement was not unlawful merely because the Applicant preferred a shorter format, and that an alternative format would have to demonstrate equivalence in all material respects, including security, legibility, durability, handling, folding, booklet configuration and voter-marking areas. The Respondents similarly maintained that the embossing requirement and prescribed samples had to be assessed against their stated purpose and the disclosed specifications, and that increased cost or production time did not, without supporting evidence, establish that a security feature was unnecessary or disproportionate.
54. Counsel nevertheless acknowledged that technical discretion could not excuse an unjustified restriction of competition. On the time allowed for preparation, the Respondents disputed that the sample requirements finalised on 25th September 2026 introduced an entirely new requirement that could not reasonably be met before the stated deadline. Counsel submitted that section 75(5) of the Act required an extension where the applicable statutory or tender-document threshold was met, and that the Board should determine whether the changes required new production or material reworking. The Respondents opposed an automatic fourteen-day extension but acknowledged that any extension required by the Act or the

nature of the amendments had to be granted. Any inconsistency in the stated closing time also required resolution through one clear and uniformly communicated timetable. The statutory suspension during the review proceedings could not retrospectively cure a defect in the original preparation period.

55. The Respondents' Counsel submitted that the cumulative effect of the impugned provisions had to be assessed by reference to the actual defects established and their effect on competition, rather than by treating the coexistence of qualification thresholds, participation restrictions, local-sourcing obligations and performance security as proof of unlawful exclusion. Counsel maintained that the Applicant had not sufficiently connected the alleged breaches to the loss of a genuine opportunity to participate. The Respondents therefore urged the Board to dismiss the substantive challenge and decline the prayers seeking wholesale replacement of the tender, compulsory adoption of the Applicant's preferred qualification and participation arrangements, and suspension of evaluation until all its demands were met.
56. In the alternative, Counsel submitted that any relief under section 173 of the Act should be confined to the provisions found unlawful or materially ambiguous, preserving the lawful remainder of the procurement. Any corrective directions should be precise, uniformly communicated and accompanied by such preparation time as the Act required. Counsel further

submitted that the Board should exercise its discretion on costs in light of the outcome of the Request for Review.

Interested Party's Submission

57. The Interested Party's Counsel submitted that the prohibition against joint ventures and subcontracting lacked a rational basis, particularly given the requirement under section 157(9) of the Act to source at least 40% of supplies from citizen contractors. Relying on *PPARB Application No. 172 of 2026 Mohammed Ali vs Accounting Officer, IEBC & Another*, Counsel contended that the Respondents' power to customise tender requirements was not absolute. The prohibition was also inconsistent with the Tender's express contemplation of Kenyan firms' participation and the consortium mechanism permitted under Addendum No. 3. Counsel maintained that joint and several liability, a lead member and appropriate vetting would adequately safeguard the Respondents' interests, and urged the Board to permit joint ventures and subcontracting to citizen contractors for defined activities.
58. On local content, Counsel distinguished the statutory obligation under section 157(9) of the Act and Regulation 165 from the impugned computation formula. Relying on ***PPARB Application No. 13 of 2021 Five Blocks Enterprises Limited vs Managing Director, Kenya Bureau of Standards***, Counsel submitted that the Tender Document had to give effect to the statutory sourcing requirement. The formula in

Addendum No. 3 was, however, incapable of accurately measuring compliance because it included taxes, duties and the Capacity Building Levy, restricted qualifying expenditure to logistics and services, and referred to Kenyan firms rather than citizen contractors. Counsel urged the Board to direct its revision to ensure compliance with section 70(6)(a) of the Act.

59. Counsel further contended that the absence of a maximum quantity, procurement period and estimated value rendered the framework's scope insufficiently defined, contrary to section 60(1) of the Act and Regulation 102(1) of the Regulations, 2020. The indicative baseline of 30 million, Counsel argued, was inadequate for tenderers required to commit prices for three years on a delivered-duty-paid basis. The Tender also imposed a KES 200 million framework guarantee alongside a further 10% call-off security, thereby risking overlapping security beyond the statutory ceiling for the same obligation. Counsel urged the Board to require disclosure of the framework value and appropriate adjustment of the security requirements.
60. On samples and time, Counsel submitted that the six days allowed after provision of the sample matrix were inadequate for an overseas manufacturer required to produce twelve sample sizes incorporating security features and ship them to Nairobi, a process estimated to require twenty-one days. Counsel also challenged the 980 mm specification for

want of a discernible justification and contended that the necessary corrections to the Tender warranted an adequate extension of time.

BOARD'S DECISION

61. The Board has considered each of the parties' cases, documents, pleadings, written submissions, authorities together with the confidential documents submitted to the Board by the 1st Respondent pursuant to Section 67(3)(e) of the Act and finds the issues that arise for determination are:

A. Whether the Tender Document, read together with Addendum No. 3 dated 17th September 2026 and the Clarifications dated 25th September 2026, complied with the Constitution and the Act.

B. What orders should issue in the circumstances.

Whether the Tender Document, read together with Addendum No. 3 dated 17th September 2026 and the Clarifications dated 25th September 2026, complied with the Constitution and the Act.

62. The Applicant's Request for Review challenges various aspects of the Tender Document as amended by Addendum No. 3 dated 17th September 2026 and the Clarifications dated 25th September 2026. The complaints

concern, among other things, the description and scope of the procurement, the qualification and capacity requirements, the prohibition against joint ventures and subcontracting, the local sourcing requirement, the deletion of provisions on margin of preference, the tender and performance security requirements, the technical specifications and the time allowed for preparation and submission of tenders. The Respondents, on their part, maintain that the impugned requirements were prescribed in the exercise of their procurement mandate and that the clarifications were intended to address issues raised by prospective tenderers and to explain the requirements of the Tender Document.

63. The central question arising from the parties' competing positions is whether the Tender Document, read together with Addendum No. 3 and the Clarifications, complied with the Constitution and the Act. The various complaints cannot be considered entirely in isolation, since they arise from different provisions of the same procurement documents and their interpretation may have a bearing on the fairness, transparency and competitiveness of the procurement as a whole. At the same time, each complaint raises a distinct question concerning the legality, clarity or practical effect of the particular requirement under challenge. The Board will therefore consider the complaints as interrelated sub-issues under the overarching question of compliance with the constitutional and statutory framework governing public procurement.

64. Article 227(1) of the Constitution provides as follows:

"227. (1) When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective."

65. The constitutional standard requires public procurement to be conducted within a framework that promotes fairness, equity, transparency, competition and cost-effectiveness. These principles inform both the formulation of procurement requirements and their application during the procurement process. They do not, however, preclude a procuring entity from prescribing technical, financial or operational requirements suited to the goods being procured. Rather, such requirements must be lawful, sufficiently clear and consistent with the constitutional principles governing public procurement.
66. The statutory framework gives effect to these constitutional imperatives. Section 58(2) of the Act requires tender documents to contain sufficient information to allow fairness, equitability, transparency, cost-effectiveness and competition among prospective tenderers. Section 60(1) of the Act requires the accounting officer of a procuring entity to prepare clear specific requirements that give a correct and complete description of the goods, works or services being procured and allow fair and open competition. Section 70(3) of the Act similarly requires tender documents

to contain sufficient information to allow fair competition among those wishing to submit tenders.

67. In determining the complaints, the Board will consider the relevant statutory provisions alongside the actual terms of the Tender Document, Addendum No. 3 and the Clarifications, as well as the parties' respective positions. This approach is necessary to establish not merely what each party contends a particular provision means, but what the provision, properly construed in its documentary and statutory context, requires of prospective tenderers and the procuring entity. The Board will consequently consider the particular complaints under the following interrelated sub-issues.

Whether the amendments and Clarifications issued by the Respondents were lawful and whether the Tender Document, as amended, sufficiently and clearly defined the scope and requirements of the procurement

68. The Applicant contends that the Tender Document describes the procurement in four mutually incompatible ways. It relies on the projected requirement of approximately 168 million ballot papers, the indicative baseline volume of approximately 30 million ballot papers under the Framework Agreement, the quantities of 479 pieces specified against each ballot-paper category in the price schedule, and the requirement for tenderers to demonstrate prior experience and production capacity at the

level of 150 million ballot papers. According to the Applicant, these figures create uncertainty as to the quantity to be procured and the basis upon which prospective tenderers are expected to prepare and price their tenders. The Applicant further contends that the failure to disclose the estimated Framework Contract value compounds that uncertainty.

69. The Respondents maintain that the figures relied upon by the Applicant serve different purposes. Their position is that the projected election requirement informs the operational capacity required of a prospective supplier, the indicative framework quantity does not constitute a guaranteed purchase, the quantities in the price schedule are intended for financial evaluation, and the 150 million threshold relates to prior experience and production capacity. They contend that the framework arrangement permits orders to be placed according to the Procuring Entity's actual requirements during the framework period and does not necessarily commit the Procuring Entity to purchasing a fixed quantity of ballot papers.
70. The Board must therefore determine whether the different figures and the manner in which the procurement has been structured leave prospective tenderers uncertain about the goods to be procured, the basis of financial evaluation and the obligations contemplated under the Framework Agreement, or whether the provisions can be reconciled by reference to their respective purposes.

71. Section 60(1) of the Act provides as follows:

"(1) An accounting officer of a procuring entity shall prepare specific requirements relating to the goods, works or services being procured that are clear, that give a correct and complete description of what is to be procured and that allow for fair and open competition among those who may wish to participate in the procurement proceedings."

72. Section 58(2) of the Act provides as follows:

"(2) The tender documents used by a procuring entity under subsection (1) shall contain sufficient information to allow fairness, equitability, transparency, cost-effectiveness and competition among those who may wish to submit their applications."

73. Section 70(3) of the Act further provides:

"The tender documents used by a procuring entity pursuant to subsection (2) shall contain sufficient information to allow fair competition among those who may wish to submit tenders."

74. A reading of these provisions demonstrates that the procuring entity is required to provide a sufficiently clear and complete description of the

procurement and adequate information to enable prospective tenderers to prepare their tenders on an informed basis. The requirements must be considered as a whole, since a provision that appears unclear when read in isolation may be explained by another provision or a valid clarification. Conversely, a clarification cannot cure an ambiguity merely by being issued; its content must adequately resolve the uncertainty in question. The Board must therefore examine the relevant provisions and determine whether the distinctions advanced by the Respondents are borne out by the procurement documents.

75. The first concern relates to the different quantities appearing in the Tender Document. In considering this complaint, the Board has examined the provisions governing prior experience and production capacity, together with Form 4A and the Clarifications issued on 25th September 2026.
76. Mandatory Requirement No. 2 of the Mandatory Technical Evaluation of Vendor Capacity provides:

"Similar Experience: The Tenderer has satisfactorily completed at least two (2) contracts for the printing of security ballot papers, with one of them have supplied not less than 150 million ballot papers, within the last five (5) years"

77. Clause 2 of the Post Qualification/Due Diligence Evaluation Criteria provides:

"Operational and Technical Capacity to manufacture at least 150,000,000 ballot papers; indicative 300,000 Forms and 55,000 register of voters in a period of 21 days, manufacturing similar security printing goods for the last 10 years."

78. These provisions prescribe distinct requirements. Mandatory Requirement No. 2 addresses the tenderer's prior experience in printing security ballot papers, including the scale of supply under at least one previous contract. Clause 2 of the Post Qualification/Due Diligence Evaluation Criteria, on the other hand, addresses operational and technical capacity to manufacture specified quantities within a prescribed period. Neither provision, by its terms, states that the Procuring Entity will purchase 150 million ballot papers under the Framework Agreement. The Board must therefore distinguish these qualification and capacity thresholds from the quantities contemplated for purchase under the framework.
79. The Board has also considered the relevant portion of Form 4A, which is headed "Price Schedule: Goods Manufactured Outside Kenya, to be Imported." Under the heading "Ballot Papers", the schedule lists twelve categories of ballot papers, each with an indicative quantity of 479 pieces. The relevant entries include:

"1. A4 (210 × 297 mm) 479 Pieces"

"2. 210 × 440 mm 479 Pieces"

"3. 210 × 620 mm 479 Pieces"

80. The same quantity is stated against the remaining ballot-paper categories listed in the schedule. Form 4A provides for the tenderer to state the unit price, the DDP price per line item, the price for inland transportation and other services required in Kenya, and the total price per line item.
81. The meaning and purpose of these quantities were subsequently addressed in clarifications issue no. 24 and 26 of the Clarifications dated 25th September 2026. Clarification issue no. 24 records the bidder's inquiry as to whether the quantities in Form 4A and the Schedule, namely 479 pieces for ballot papers, three pieces for tactile folders, and ten forms or posters, were the definitive indicative minimum quantities for financial evaluation. The Respondents' answer was:

"Yes, 479 pieces for ballot papers, three pieces for tactile folders, and ten forms/posters-are the definitive indicative minimum quantities for financial evaluation as indicated in the price schedule"

82. Clarification issue no. 26 records a further inquiry concerning what constituted a “piece”, including whether it meant a unit or booklet or one page, and whether the stated quantities were correct in light of the approximate 55,000 polling stations in Kenya. The Respondents’ answer was:

“A piece is a leaflet or a page. The 479 units are indicative for bidding purpose”

83. The Board notes that the clarifications expressly identify the purpose of the quantities appearing in Form 4A as financial evaluation and bidding. They also define a “piece” as a leaflet or page. Read together with the price schedule, these responses indicate that the 479 units provide a common basis upon which tenderers are to quote and their prices compared across the specified categories of ballot papers. They do not state that the Procuring Entity will ultimately order only 479 ballot papers of each category.
84. The use of an indicative quantity for financial evaluation must, however, be distinguished from a guaranteed minimum purchase under the Framework Agreement. Although Clarification issue no. 24 uses the words “indicative minimum quantities”, it expressly identifies those quantities as being for financial evaluation. Clarification issue no. 26 reinforces that purpose by stating that the 479 units are indicative for bidding. The Board

must therefore read the expression in the context of the question asked and the response given, rather than construe it as a guarantee that the Procuring Entity will purchase the stated quantities.

85. The Board further notes that the projected requirement of approximately 168 million ballot papers concerns the Procuring Entity's anticipated requirements for the General Election. It serves a different purpose from the quantities appearing in the price schedule. Likewise, the indicative baseline of approximately 30 million ballot papers under the Framework Agreement concerns the anticipated scale of orders under that arrangement, whereas the 150 million threshold concerns the tenderer's prior experience and production capacity. These figures cannot properly be treated as interchangeable merely because they relate to ballot papers.
86. The distinction is particularly important in the context of a framework arrangement. The absence of a guaranteed minimum purchase does not, without more, render the arrangement unintelligible. The Procuring Entity's actual orders may depend on its requirements during the framework period, while the production capacity required of a supplier may be informed by the wider operational demands of an election and the limited time within which ballot papers must be manufactured. It is therefore possible for the required production capacity to exceed the indicative baseline quantity expected to be ordered under the framework without the two figures contradicting each other.

87. The Board accordingly finds that the projected requirement, the indicative framework baseline, the price schedule quantities and the experience and capacity thresholds address different aspects of the procurement. When read together with the relevant clarifications, the differences between these figures do not, in themselves, establish that the Tender Document describes four mutually incompatible quantities to be purchased.
88. The Applicant's related complaint concerns the failure to disclose the estimated Framework Contract value. The Board has considered this contention alongside Form 4A and the provisions governing the tender and performance security.
89. Form 4A requires tenderers to quote unit prices and corresponding totals for the specified categories of goods using the quantities stated for financial evaluation. This provides a basis for comparing the prices submitted by tenderers. The fact that those quantities are indicative and do not constitute a guaranteed total purchase does not, by itself, establish that tenderers are unable to formulate their prices. The more pertinent question is whether the tender documents provide a sufficiently clear basis for tenderers to price the goods and understand the nature of the commitment contemplated by the Framework Agreement.
90. The Board notes that Addendum No. 3 addressed the form and amount of tender security by providing, in the relevant amendment, as follows:

"Tender Security of Kenya Shillings Forty Million Only (Ksh.40,000,000.00) in form of EITHER: (a) cash; OR (b) a bank guarantee; OR (c) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority (PPRA); OR (d) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya (CBK). Valid for 270 days from date of tender opening. The guarantee shall be in format provided in Section IV - Tendering Forms"

91. The security is therefore expressed as a fixed amount, rather than as a percentage of the estimated Framework Contract value. The Applicant's argument that tenderers must themselves calculate the prescribed tender security by reference to an undisclosed framework value is not borne out by the wording of this provision. Whether the fixed amount complies with the statutory ceiling prescribed by section 61(2) of the Act is a separate question concerning the legality of the tender security requirement and will be considered under the relevant sub-issue.
92. The Board has also considered ITT 47.3 of the Tender Data Sheet, which provides:

"ITT 47.3 Performance security shall be: (a) Framework Contract: Performance security not more than ten percent (10%) of the estimated Framework Contract value, as a BANK Guarantee from a CBK-recognized bank, submitted before contract signing, valid for three Hundred and Sixty-Five (365) days, and renewed annually in Years two (2) and Three (3) failure to renew entitles the Commission to terminate the contract. (b) Call –off Orders: 10% of each Call Off Contract Price, submitted before signing Call Off Order, released to the supplier within thirty (30) days of delivery completion (c) Forfeiture: where a contract is not fully satisfactorily executed, the Performance Security shall be fully forfeited to the Procuring Entity as compensation, without prejudice to other penalties under the Act."

93. GCC 18.1 of the Special Conditions of Contract contains the same framework-level and call-off performance security requirements. The wording distinguishes between security calculated by reference to the estimated Framework Contract value and security calculated by reference to the price of each call-off contract. The framework-level requirement is expressly capped at not more than ten per cent of the estimated value; it does not state that every successful tenderer must invariably furnish a guarantee of KES 200,000,000 irrespective of the applicable value.

94. The Board considers that these provisions must be read according to their stated bases of calculation. The fixed tender security, the framework-level performance security and the call-off security are not expressed in identical terms or calculated by reference to the same stated amount. Consequently, their inclusion does not, without further analysis, demonstrate that the quantities or pricing basis of the procurement are unintelligible. The question whether the framework-level and call-off security requirements, in their operation, comply with section 142(1) of the Act is reserved for determination under the separate sub-issue on performance security.
95. The Board is therefore not persuaded that the failure to state a guaranteed total quantity or a fixed amount of expenditure, considered in isolation, renders the framework arrangement incapable of being understood or priced. A framework arrangement does not necessarily require the procuring entity to commit itself to purchasing a predetermined quantity where orders are to be placed according to its actual requirements. What the Act requires is that the procurement documents sufficiently disclose the nature of the arrangement, the goods being procured and the basis upon which tenders are to be prepared and evaluated.
96. Having considered the relevant provisions of the Tender Document, Addendum No. 3 and the Clarifications, the Board finds that the Applicant has not demonstrated that the different figures relied upon are contradictory descriptions of the quantity to be purchased. The projected

election requirement, the indicative framework baseline, the price schedule quantities and the prior experience and production capacity thresholds serve distinct purposes. Clarifications issues no. 24 and 26 explain the role of the quantities in Form 4A and the meaning of a “piece”. The absence of a guaranteed minimum purchase or a single fixed total quantity does not, in the circumstances presented under this complaint, establish non-compliance with sections 58(2), 60(1) and 70(3) of the Act.

97. Accordingly, this limb of the Applicant’s challenge fails. This finding is confined to the alleged uncertainty arising from the different quantities, the financial evaluation basis and the absence of a guaranteed fixed purchase under the Framework Agreement. It does not determine the separate questions concerning the lawfulness of the qualification criteria, the tender and performance security requirements, or the other challenged provisions, which the Board will consider under the respective sub-issues.

Whether the qualification criteria and contractual requirements relating to similar experience, financial capacity, financial capability, production capacity and delivery timelines were lawful, rational and sufficiently clear

98. The Applicant challenges the reduction of the look-back period for similar experience from ten years to five years and the alleged inconsistencies concerning the 21-day production-capacity requirement and the 30-day

contractual delivery period. Its case is that the Tender Document does not clearly disclose whether the 21-day requirement is a mandatory pass/fail criterion or a scored benchmark, and whether the contractual delivery period runs from the issuance of a Local Purchase Order (LPO) or from the satisfaction of the latest of the stated operational dependencies. The Applicant contends that these uncertainties affect the preparation and evaluation of tenders and violate sections 60(1), 70(3) and 70(6)(a) of the Act, as well as Article 227(1) of the Constitution.

99. The Board has considered these complaints alongside the relevant provisions of the Tender Document, Addendum No. 3 and the Clarifications. The Board has also considered its determination in ***PPARB Application No. 172 of 2026***, in which the Applicant therein, Mohamed Ali, challenged the same procurement and the Board found that the requirements relating to Similar Experience, Financial Capacity and Financial Capability had not been shown to be unlawful, discriminatory, disproportionate or otherwise inconsistent with the Constitution and the Act.
100. The Board notes that the Applicant in the present proceedings expressly disavows an intention to reopen the finding in ***PPARB Application No. 172 of 2026*** that requiring direct and recent experience in printing security ballot papers at substantial scale was rationally justified. Its complaint is confined to the reduction of the relevant look-back period from ten years to five years. The Board will therefore consider that specific

complaint, together with the distinct complaints concerning production capacity and delivery timelines, without revisiting the financial thresholds which the Applicant has not specifically challenged.

101. On the similar-experience requirement, the Tender Document provides under Mandatory Requirement No. 2 of the Mandatory Technical Evaluation of Vendor Capacity as follows:

"Similar Experience: The Tenderer has satisfactorily completed at least two (2) contracts for the printing of security ballot papers, with one of them have supplied not less than 150 million ballot papers, within the last five (5) years"

102. The Board notes that the requirement serves to establish that a tenderer has previously performed contracts involving the printing of security ballot papers and that at least one of those contracts involved the supply of a substantial volume of not less than 150 million ballot papers. The five-year period restricts the assessment to experience acquired within a defined and recent period. The fact that a previous tender may have allowed a ten-year look-back period does not, without more, establish that the subsequent adoption of a five-year period is unlawful. The question is whether the restriction is rationally connected to the procurement and whether the Applicant has demonstrated that it unjustifiably limits competition or otherwise violates the Act.

103. In ***PPARB Application No. 172 of 2026***, the Board considered the justification for requiring recent experience in printing security ballot papers at substantial scale and found that the Similar Experience requirement had not been shown to be unlawful, discriminatory or disproportionate. The present Applicant has not demonstrated that the reduction of the look-back period to five years, considered independently of the requirement for substantial and direct experience, is arbitrary or incapable of justification. Nor has it demonstrated that the use of the five-year period, as opposed to the ten-year period it seeks, necessarily excludes otherwise qualified tenderers in a manner prohibited by the Constitution or the Act.
104. The Board is therefore not persuaded that the reduction of the look-back period from ten years to five years, on the material presented, provides a sufficient basis for interfering with the Procuring Entity's formulation of the qualification requirement. The Applicant's preference for a longer period cannot, by itself, establish that the period adopted by the Procuring Entity is unlawful.
105. The Board now turns to the production-capacity and delivery requirements. The Tender Document's Mandatory Requirement No. 2 requires a tenderer to demonstrate that it has supplied not less than 150 million ballot papers under one contract within the prescribed five-year

period. Further, Clause 2 of the Post Qualification/Due Diligence Evaluation Criteria provides as follows:

"Operational and Technical Capacity to manufacture at least 150,000,000 ballot papers; indicative 300,000 Forms and 55,000 register of voters in a period of 21 days, manufacturing similar security printing goods for the last 10 years."

106. The Board notes that the Tender Document thus addresses two related but distinct matters. The Similar Experience requirement concerns the tenderer's record of past performance, including whether it has completed a contract involving the supply of at least 150 million ballot papers. The operational and technical capacity requirement concerns the tenderer's ability to manufacture the prescribed volume within 21 days. The first looks to demonstrated past experience, while the second concerns production capacity relevant to the performance of the procurement.
107. The Applicant's complaint is that the 21-day period is inconsistently presented as a mandatory qualification requirement and as a benchmark used for technical scoring. In Clarification issue no. 9, a bidder sought confirmation whether the ability to manufacture 150 million ballot papers within 21 days remained a mandatory Pass/Fail qualification requirement. The Respondents answered:

"Yes, the ability to manufacture 150 M ballot papers within 21 days remains a mandatory qualification requirement."

108. On the other hand, Clause 8 of Addendum No. 3, dealing with the delivery timeline, provides as follows:

"AMENDED. Contractual delivery is fixed at 30 calendar days, activated strictly from the latest of the following operational dependencies: LPO issuance, final artwork sign-off, delivery of validated variable data, or formal written production authorization. The 21-day metric is an internal factory capacity benchmark used for technical score allocation, not a contractual turnaround limit. The 10-day turnaround financial evaluation clause is deleted. Liquidated Damages (LD) under GCC Clause 26 will not apply to any delays caused by IEBC administrative bottlenecks (such as delayed artwork design sign-offs or variable data verification drops). The 30-day window encompasses production, international freight, port clearance, and final delivery to the IEBC central warehouse in Nairobi."

109. The Board recognises that the two provisions could give rise to a question as to the precise role of the 21-day metric in the evaluation of tenders. However, the provisions must be considered in their proper context and alongside the distinction between qualification and contractual

performance. Clarification issue no. 9 expressly confirms that the ability to manufacture 150 million ballot papers within 21 days remains a mandatory qualification requirement. Addendum No. 3, in turn, distinguishes that production-capacity benchmark from the contractual period within which delivery is to be completed. It expressly provides that the 21-day metric is not the contractual turnaround period.

110. The Board finds that the existence of a production-capacity requirement of 21 days alongside a contractual delivery period of 30 days does not, of itself, render the Tender Document contradictory. The two periods are capable of serving different purposes. The former assesses the tenderer's production capacity, while the latter allows for the overall process of production, international freight, port clearance and delivery to the Procuring Entity's warehouse. The fact that the contractual period is longer than the production-capacity benchmark is not inherently inconsistent, given that the delivery period expressly encompasses activities beyond manufacture.
111. The Board has nevertheless considered the Applicant's concern that the reference in Addendum No. 3 to technical score allocation may be read as inconsistent with the mandatory Pass/Fail requirement confirmed in Clarification issue no. 9. Read as a whole, however, the documents establish that the capacity to manufacture the prescribed volume within 21 days remains a requirement, while the 30-day period governs delivery under the contract. The Applicant has not demonstrated, on the material

before the Board, that the reference to technical score allocation altered the substance of the procurement or established that the 21-day capacity requirement had been withdrawn. The Board is therefore not persuaded that this aspect of the Tender Document has been shown to be unlawful.

112. The Board next considers the operative trigger for the 30-day delivery period. The List of Goods and Delivery Schedule at page 100 of the Tender Document provides, in respect of the listed goods, that they are to be supplied "As and when Required" and that delivery is to be made "Within 30 days of LPO". The Applicant contends that this provision is inconsistent with Addendum No. 3, which makes the commencement of the delivery period dependent on the latest of four operational events.
113. The relevant part of Clause 8 of Addendum No. 3 states that contractual delivery is fixed at 30 calendar days and is "activated strictly from the latest of the following operational dependencies: LPO issuance, final artwork sign-off, delivery of validated variable data, or formal written production authorization." The same clause further states that the 30-day window encompasses production, international freight, port clearance and final delivery to the Procuring Entity's central warehouse in Nairobi.
114. The Board notes that the original delivery schedule identifies the LPO as the event from which the 30-day delivery period is calculated. Addendum No. 3 subsequently introduces additional operational dependencies and

expressly amends the delivery timeline. The effect of the amendment is to ensure that the contractual delivery period does not begin to run before the latest of the identified prerequisites has occurred. This is relevant in a procurement involving ballot papers and other election materials whose production may depend on the approval of artwork and the provision of validated variable data.

115. The Board further notes that Clarification issue no. 66 addressed a bidder's question as to whether the 21-day production period and the 30-day delivery period were separate and sequential, and sought clarification on the activities included in the delivery period. The Respondents answered:

"The 30 days delivery period refers to production, freight, clearance and warehouse delivery beginning from the date of LPO. Refer to delivery schedule Page 100 of the tender document."

116. The Board acknowledges that this response refers to commencement from the date of the LPO, whereas Addendum No. 3 refers to the latest of the four operational dependencies. Nevertheless, the response to Clarification issue no. 66 must be read in the context of the express amendment made by Addendum No. 3. The latter specifically amended the contractual delivery timeline and expressly identified the events upon which the 30-day period would be activated. The clarification explains the activities

covered by that period and directs bidders to the delivery schedule; it does not expressly state that the additional dependencies introduced by the amendment are to be disregarded.

117. In the circumstances, the Board is not persuaded that the reference to the LPO in Clarification issue no. 66, considered together with the amended delivery clause, establishes that the Procuring Entity intended to maintain two competing contractual delivery periods. Addendum No. 3 expressly addresses the trigger for the amended period, while Clarification issue no. 66 explains the activities encompassed within the 30 days. The Applicant has not demonstrated that the provisions, read together, necessarily result in an inability to determine the contractual delivery obligations or that the alleged inconsistency has been shown to compromise the lawful evaluation of tenders.
118. The Board reiterates that the Procuring Entity is required to formulate clear and coherent tender requirements and to ensure that prospective tenderers can ascertain the requirements against which their tenders will be evaluated. However, not every difference in wording between a tender document and a subsequent clarification establishes a violation of the Act. The question is whether, read as a whole, the procurement documents disclose a material uncertainty that renders the requirements unlawful or undermines the fairness, transparency or competitiveness of the process. On the material before it, the Board is not satisfied that the Applicant has

established such a violation in relation to the production-capacity and delivery requirements.

119. The Board has also considered the Applicant's reliance on ***PPARB Application No. 172 of 2026***, in which the Board found that an inconsistency concerning the acceptable form of tender security created uncertainty in relation to a mandatory requirement and directed the Procuring Entity to clarify and, where necessary, amend the relevant provisions. That determination does not establish that every alleged inconsistency in the present Tender Document must result in the same intervention. The Board must assess each complaint on its own facts and determine whether the alleged defect has been established. In the present instance, the Applicant has not demonstrated that the production-capacity and delivery provisions, when read together, create an uncertainty of such a nature as to warrant the relief sought.

120. In view of the foregoing, the Board finds that the Applicant has not established that the five-year look-back period for Similar Experience, the 21-day production-capacity requirement or the 30-day contractual delivery period has been shown to be unlawful, irrational or inconsistent with the Constitution and the Act. Consequently, this sub-issue fails.

Whether the prohibition against joint ventures and subcontracting, read together with the forty per cent local sourcing requirement and its prescribed computation and

verification methodology, complied with the Act and the constitutional principles governing public procurement

121. The Applicant challenged the prohibition against joint ventures and subcontracting on the ground that these are recognised modes of participation in public procurement and that the Respondents had not provided an objectively discernible justification for excluding them. The Applicant contended that the restrictions were particularly prejudicial when read together with the requirement for foreign tenderers to source at least forty per cent of their supplies from citizen contractors, since the Tender Document required commitments or memoranda of understanding with Kenyan firms but prohibited subcontracting. According to the Applicant, the combined effect of these requirements, together with the qualification criteria, unduly restricted participation by Kenyan firms and undermined the statutory and constitutional objectives of promoting local industry and citizen contractors.
122. The Respondents maintained that the Act does not require a procuring entity to permit joint ventures or subcontracting in every procurement. They submitted that the decision to permit either arrangement depends on the nature of the goods being procured and the need to safeguard accountability, security, continuity of production and timely delivery. They further contended that the procurement concerned security-sensitive election materials for which the Respondents required a single tenderer to bear direct responsibility for performance. On the local content

requirement, the Respondents maintained that the forty per cent threshold was a statutory requirement applicable to foreign tenderers participating in international tenders and that the Tender Document, as amended and clarified, sufficiently identified the qualifying local costs and the evidence required to demonstrate compliance.

123. The Board has considered the parties' respective positions, the Tender Document, Addendum No. 3, the Clarifications and the applicable provisions of the Act. The question is whether the Applicant has demonstrated that the prohibition against joint ventures and subcontracting, considered alongside the local content requirement and the prescribed means of demonstrating compliance, contravened the Act or the constitutional principles governing public procurement.
124. The Board notes that Clause 3.1 of the Instructions to Tenderers recognises participation by a joint venture, provides for joint and several liability of its members and requires the nomination of a representative. However, the Tender Data Sheet, which provides that its specific data shall complement, supplement or amend the Instructions to Tenderers and shall prevail in the event of a conflict, states against ITT 3.1 that the maximum number of joint venture members is "NOT APPLICABLE." Further, in response to Clarification issue no. 64, the Respondents expressly stated that "Joint Venture is Not Allowed."

125. The Board finds that the provisions of the Instructions to Tenderers must be read together with the Tender Data Sheet and the subsequent clarification. Read in that manner, the Tender Document communicated the Respondents' position that joint ventures were not permitted in this procurement. The fact that the general instructions contemplate joint ventures does not, by itself, establish that the Respondents were legally obliged to allow them in the particular tender. The Applicant was required to demonstrate the legal basis upon which the exclusion was prohibited, rather than merely establish that joint ventures are ordinarily recognised under public procurement documents.
126. The Applicant relied on the principles of accountability, continuity and security to argue that the Respondents could have addressed their concerns through mechanisms such as joint and several liability, the appointment of a lead member and the vetting of joint venture members. The Board has considered these arguments. However, the existence of possible contractual safeguards does not, without more, establish that the Respondents acted unlawfully by adopting a different procurement structure. The Respondents explained that the procurement concerned security-sensitive election materials and that they sought to maintain direct accountability for performance and avoid the operational and enforcement difficulties they associated with joint ventures and subcontracting. The Applicant has not demonstrated that the exclusion, in the context of this procurement, was contrary to a specific requirement of the Act.

127. The Board has also considered the requirement under Mandatory Requirement No. 10 for documentary evidence of an operational disaster recovery production site to guarantee business continuity and timely delivery in the event of disruption affecting the main production facility. The Applicant contended that the need for continuity could be met through an affiliated production site supported by a legally binding contractual or consortium arrangement. However, the requirement for a disaster recovery site does not, in itself, establish that the Respondents were obliged to permit joint ventures or subcontracting as the means of satisfying it. The Applicant has not demonstrated that the requirement for a disaster recovery site and the prohibition against joint ventures or subcontracting were legally irreconcilable.

128. The Board next turns to the forty per cent local content requirement. Section 3 of the Act identifies, among the guiding principles of public procurement, the promotion of local industry, sustainable development and citizen contractors. Further, section 157(9) of the Act provides:

"For the purpose of ensuring sustainable promotion of local industry, a procuring entity shall have in its tender documents a mandatory requirement as preliminary evaluation criteria for all foreign tenderers participating in international tenders

to source at least forty percent of their supplies from citizen contractors prior to submitting a tender.”

129. The Board finds that the Act expressly contemplates a mandatory local sourcing requirement for foreign tenderers participating in international tenders. Accordingly, the inclusion of a forty per cent local content requirement in the impugned Tender Document is consistent with the statutory objective of promoting local industry and citizen contractors. The issue is whether the particular computation and verification methodology adopted by the Respondents has been shown to be inconsistent with the Act or to render compliance impossible.

130. Addendum No. 3 provided that the local content requirement was mandatory for foreign tenderers and prescribed the following formula:

"Local Content % = (Kenyan Costs / Total DDP Tender Sum inclusive of all taxes, duties, freight, insurance, CBL) x 100."

131. It identified qualifying costs to include Kenyan-flag shipping, Kenyan clearing firms, inland transport, warehousing, security, material handling, local insurance, local labour, local project management, local packaging and local professional services. It further required tenderers to submit a duly completed Form 5, a breakdown of costs and commitment letters or

memoranda of understanding with Kenyan firms at the tender stage, with final verified invoices required at call-off.

132. The Board has also considered Clarifications issues no 16 and 68, in which the Respondents maintained that the forty per cent local content plan was mandatory for every foreign tenderer, including those manufacturing the security-printed goods abroad. Clarification issue no. 20 specified that the denominator was the total tender sum inclusive of taxes, duties, international freight, insurance and the Capacity Building Levy. In response to Clarification issue no. 79, which sought further clarification on qualifying costs and the supporting evidence, the Respondents referred bidders to Form 5: Local Content Plan.

133. Form 5 identifies the total tender sum, taxes, shipping using a Kenyan-registered carrier, clearing and forwarding by a Kenyan-registered and owned agency, transportation by Kenyan-owned transport companies, security services, and materials handling at the National Warehouse. It also provides for other specified costs and requires the total local content to constitute a minimum of forty per cent of the total tender sum. Mandatory Requirement No. 13, in turn, requires compliance with the forty per cent local content plan and submission of a duly completed, signed and stamped Form 5.

134. The Board finds that, read together, these provisions identify the required threshold, the basis of computation, specified categories of local

expenditure and the principal documentary requirements for demonstrating compliance. Although the response to Clarification issue no. 79 referred bidders to Form 5 rather than separately addressing each cost category raised, the Applicant has not demonstrated that the form and the other tender provisions, read together, rendered the requirement incapable of objective application. Nor has the Applicant shown that the prescribed methodology contradicts the requirement under section 157(9) of the Act.

135. The Applicant's principal contention is that, because the goods are manufactured abroad, the cost of overseas production, international freight, duties and other expenses would dominate the tender sum, leaving insufficient Kenyan costs to attain the forty per cent threshold. The Applicant further alleged that a foreign tenderer could only attain the threshold by inflating the costs attributed to local services or by entering into arrangements inconsistent with the prohibition against subcontracting.

136. The Board has considered these allegations alongside the Interested Party's position on the practical effect of the impugned requirements. However, neither the Applicant nor the Interested Party placed before the Board a cost analysis, financial model, industry data, evidence from prospective local service providers or other material demonstrating that a foreign tenderer could not attain the prescribed threshold using the categories of local costs identified in the Tender Document. Their

contentions on the alleged impossibility of compliance therefore remain averments unsupported by evidence. The Board is not satisfied that the asserted commercial difficulty, without supporting material, establishes that the requirement is unlawful or incapable of compliance.

137. The Board further observes that the requirement to source a prescribed proportion of supplies or services locally does not, without more, establish that the Respondents were legally obliged to permit joint ventures or subcontracting. The Applicant has not demonstrated that the Act requires procuring entities to allow those arrangements in every procurement, irrespective of the nature of the goods or the considerations informing the procurement. Equally, the Applicant has not established that the local content requirement could only be satisfied through a joint venture or subcontracting arrangement prohibited by the Tender Document. The Board therefore finds no sufficient basis to conclude that the challenged provisions are necessarily incompatible.

138. The Applicant also argued that the combined effect of the restrictions and the qualification requirements was to exclude Kenyan manufacturers from participating in the procurement, whether independently or through a joint venture or subcontracting arrangement. The Board recognises that section 3 of the Act requires public procurement to be guided by, among other principles, equality, value for money, promotion of local industry and promotion of citizen contractors. Those principles, however, must be applied to the requirements of the particular procurement and the

evidence presented before the Board. The Applicant has not demonstrated that the impugned restrictions, individually or cumulatively, unlawfully excluded eligible tenderers or defeated the statutory objective of promoting local industry. The alleged effect on Kenyan firms cannot, in the absence of supporting evidence and a demonstrated inconsistency with the Act, be sufficient to establish a violation of the Act or the Constitution.

139. Consequently, the Board finds that the Applicant has not established that the prohibition against joint ventures and subcontracting was unlawful, that the forty per cent local content requirement was inconsistent with the Act, or that the prescribed computation and verification methodology was incapable of objective application or impossible to comply with. The Board is not persuaded that the impugned provisions, whether considered individually or cumulatively, have been demonstrated to contravene the Act or the constitutional principles governing public procurement. This sub-issue therefore fails.

Whether the deletion of the margin of preference provisions from the Tender Document was lawful and consistent with the applicable statutory framework

140. The Applicant challenged the deletion of the margin of preference provisions from the Tender Document on the ground that the Respondents had relied on section 92 of the Act without identifying any provision

exempting open international tenders from the statutory framework governing preferences and reservations. The Applicant contended that the deletion was inconsistent with Article 227(1) of the Constitution and section 3 of the Act, which require public procurement to promote local industry and citizen contractors. The Applicant further argued that the Respondents could not retain the mandatory local content requirement applicable to foreign tenderers while deleting the preference provisions intended to benefit citizen contractors and locally manufactured goods.

141. The Respondents maintained that the deletion was intended to remove uncertainty and establish a uniform basis for evaluating tenders. They submitted that a margin of preference and the local content requirement are distinct mechanisms, and that retaining the latter did not require the application of the former. The Respondents further contended that the deletion did not prevent Kenyan tenderers from participating in the procurement and that the Applicant had not demonstrated how the amendment affected the prices quoted or the evaluation of tenders.
142. The Board has considered the parties' respective positions, the relevant provisions of the Act, the original Tender Document, Addendum No. 3 and the Clarifications. The question is whether the Respondents acted unlawfully in deleting the margin of preference provisions and declaring the margin inapplicable to this procurement.

143. The Board notes that section 92 of the Act, upon which the Respondents relied in Addendum No. 3, identifies the methods through which a procuring entity may undertake procurement. It does not expressly provide that an open international tender is exempt from the statutory framework governing preferences and reservations. The Board therefore considers it necessary to examine the relevant provisions concerning international tendering and preferences, alongside the specific terms of the Tender Document, to determine whether the deletion complained of has been shown to be unlawful.

144. Section 89 of the Act, which governs international tendering and competition, provides at paragraph (f) that:

"where local or citizen contractors participate they shall be entitled to preferences and reservations as set out in section 155."

145. Further, section 155(1) of the Act provides:

"Pursuant to Article 227(2) of the Constitution and despite any other provision of this Act or any other legislation, all procuring entities shall comply with the provisions of this Part."

146. Section 155(3) of the Act further provides:

"Despite the provisions of subsection (1), preference shall be given to-

(a) manufactured articles, materials and supplies partially mined or produced in Kenya or where applicable have been assembled in Kenya; or

(b) firms where Kenyans are shareholders."

147. The Board finds that these provisions establish the statutory framework governing preferences and reservations, including in relation to international tendering. However, the existence of that framework does not, without more, establish that every international tender must apply a particular percentage of price preference or that the specific fifteen per cent margin contained in the original Tender Document was necessarily applicable to this procurement. The application of the particular margin must be assessed in light of the actual terms of the Tender Document and the conditions governing its application.

148. In this regard, ITT 32.3 of the original Tender Document provided as follows:

"A margin of preference shall not be allowed unless it is specified so in the TDS."

149. Clause 3.1 of Section III - Evaluation and Qualification Criteria, provided:

"If the TDS so specifies, the Procuring Entity will grant a margin of preference of 15% (fifteen percent) to Tenderers offering goods manufactured, mined, extracted, grown, assembled or semi-processed in Kenya. Goods assembled or semi-processed in Kenya shall have a local content of not less than 40%."

150. Clause 3.2 of Section III - Evaluation and Qualification Criteria prescribed the methodology for classifying tenders into Groups A, B and C and comparing their evaluated prices for purposes of applying the fifteen per cent margin of preference.

151. The Board observes that, although Section III - Evaluation and Qualification Criteria contained a detailed methodology for applying a fifteen per cent margin of preference, the Tender Data Sheet did not specify that the margin would apply. Clause 3.1 expressly made the grant of the margin conditional upon the Tender Data Sheet specifying its application, while ITT 32.3 prohibited the allowance of a margin unless it had been so specified.

152. The Board finds that the original Tender Document did not unequivocally activate the specific fifteen per cent margin of preference contained in Section III - Evaluation and Qualification Criteria. The inclusion of a detailed evaluation methodology, without the corresponding specification in the Tender Data Sheet, did not by itself establish that the margin was applicable to the evaluation of tenders. Accordingly, the Applicant has not demonstrated that the original Tender Document conferred an operative entitlement to the application of that particular margin, which the Respondents subsequently withdrew through Addendum No. 3.
153. The Board has also considered the wording of Addendum No. 3, which provided:

"NOT APPLICABLE. This is an Open International Tender per PPADA Sec 92. References to margins of preference or reservation rules in Section III or the Tender Data Sheet (TDS) are hereby deleted in their entirety. Evaluation at ITT 32.3 = N/A"

154. The Board notes that the amendment expressly removed the references to margins of preference and reservation rules from the Tender Document and clarified that ITT 32.3 would not apply. While the reference to section 92 of the Act does not, by itself, establish a general exemption of international tenders from Part XII of the Act, the question before the

Board is whether the Applicant has demonstrated that the deletion of these provisions, in the circumstances of this procurement, violated an applicable statutory requirement.

155. The Board further notes that the Respondents maintained the same position in the Clarifications. In response to Clarification No. 14, which sought to establish whether a margin of preference or reservation would apply and, if so, the applicable percentage and methodology, the Respondents stated:

"Margin of preference shall be not applicable in this tender."

156. The same response was given to Clarification issue no. 15, which sought clarification on the documents to be relied upon in determining eligibility for the margin of preference, and Clarification issue no. 19, which sought confirmation as to whether the margin applied in accordance with the conditions in Section III - Evaluation and Qualification Criteria.

157. The Board finds that the Addendum and Clarifications consistently communicated the Respondents' position that no margin of preference would be applied in evaluating the tenders. More importantly, the Applicant has not demonstrated that the specific fifteen per cent margin had become operative under the original Tender Document, given the express condition in ITT 32.3 and the absence of a corresponding specification in the Tender Data Sheet. The Board is therefore not satisfied

that the amendment withdrew an existing entitlement to the application of that margin.

158. The Board has considered the Applicant's contention that the Respondents could not retain the forty per cent local content requirement for foreign tenderers while deleting the margin of preference provisions. However, the two mechanisms are distinct. The local content requirement is expressly provided for under section 157(9) of the Act, which states:

"For the purpose of ensuring sustainable promotion of local industry, a procuring entity shall have in its tender documents a mandatory requirement as preliminary evaluation criteria for all foreign tenderers participating in international tenders to source at least forty percent of their supplies from citizen contractors prior to submitting a tender."

159. The mandatory local content requirement therefore has an express statutory basis. Its retention does not, by itself, establish that the particular fifteen per cent margin of preference contained in Section III - Evaluation and Qualification Criteria had to be applied notwithstanding the conditions stipulated in ITT 32.3 and clause 3.1.
160. The Board is also not persuaded that the deletion of the margin of preference provisions, in itself, rendered Kenyan tenderers ineligible to

participate in the procurement. The absence of a price preference does not amount to a prohibition against participation by local or citizen contractors. The Applicant has not demonstrated that the amendment excluded Kenyan tenderers from submitting bids or that eligibility to participate was made conditional upon being a foreign tenderer.

161. The Board has further considered the Applicant's contention that tenderers prepared and priced their bids on the assumption that a margin of preference would apply, and that its deletion shortly before the closing date changed the basis of price evaluation. The Respondents disputed this allegation and submitted that the Applicant had not identified any particular price or evaluation calculation affected by the deletion. In light of the absence of a provision in the original Tender Data Sheet activating the fifteen per cent margin, the Board is not satisfied that the Applicant has established that the amendment altered an operative price preference on the basis of which tenders had to be evaluated.

162. The Board recognises that Article 227(1) of the Constitution and section 3 of the Act require public procurement to adhere to the applicable constitutional and statutory principles, including the promotion of local industry and citizen contractors. However, those principles must be applied alongside the specific provisions governing the particular procurement and the terms of the Tender Document. In the present case, the Applicant has not demonstrated that the deletion of the particular margin of preference provisions contravened an express statutory requirement to apply that

margin in this tender. Nor has the Applicant established that the deletion, in the circumstances presented, unlawfully excluded Kenyan tenderers or otherwise violated the constitutional principles governing public procurement.

163. Consequently, the Board finds that the Applicant has not established that the deletion of the margin of preference provisions from the Tender Document was unlawful or inconsistent with the applicable statutory framework. In particular, the original Tender Data Sheet did not activate the fifteen per cent margin prescribed in Section III – Evaluation and Qualification Criteria, and the Applicant has not demonstrated that the subsequent amendment withdrew an operative entitlement or otherwise contravened the Act. This sub-issue therefore fails.

Whether the tender security and the framework-level and call-off performance security requirements complied with the Act.

164. The Applicant contended that the requirement for a framework-level bank guarantee of KES 200,000,000, in addition to a performance security equivalent to ten per cent of each call-off contract price, contravened section 142(1) of the Act. It argued that the two securities were cumulatively required and that their combined effect could result in security approaching twenty per cent of the contract value. The Applicant further challenged the clarity of the framework-level guarantee, its annual

renewal requirement and the provision for full forfeiture upon unsatisfactory performance.

165. The Respondents maintained that the two securities applied at different contractual levels and were calculated by reference to different values. They contended that the framework-level guarantee secured performance of the Framework Contract as a whole, while the ten per cent guarantee applied to each individual call-off order. They further argued that the Applicant had not demonstrated that section 142 of the Act required securities applicable to distinct contractual obligations to be aggregated when determining compliance with the statutory ceiling.

166. The Board has considered the parties' rival arguments, the relevant provisions of the Act and the impugned clauses of the Tender Document, Addendum No. 3 and the clarifications issued by the 2nd Respondent. Section 142 of the Act provides as follows:

"142. Performance Security

(1) Subject to the regulations, a successful tenderer shall submit a performance security equivalent to not more than ten per cent of the contract amount before signing of the contract.

(2) In case the contract is not fully or well executed, the performance security shall unconditionally be fully seized by the procuring entity as compensation without prejudice to other penalties provided for by the Act.”

167. Section 60(1) of the Act further provides:

"60. Specific requirements

(1) An accounting officer of a procuring entity shall prepare specific requirements relating to the goods, works or services being procured that are clear, that give a correct and complete description of what is to be procured and that allow for fair and open competition among those who may wish to participate in the procurement proceedings.”

168. The Board notes that the statutory limit under section 142(1) of the Act is expressed by reference to the contract amount. The issue, therefore, is whether the Applicant has demonstrated that the framework-level and call-off-level performance security requirements contravene that limit or otherwise impose unlawful requirements upon tenderers.

169. ITT 47.3, as set out in the Tender Data Sheet (TDS), provides as follows:

"Performance security shall be: (a) Framework Contract: Performance security not more than ten percent (10%) of the estimated Framework Contract value, as a BANK Guarantee from a CBK-recognized bank, submitted before contract signing, valid for three Hundred and Sixty-Five (365) days, and renewed annually in Years two (2) and Three (3) failure to renew entitles the Commission to terminate the contract. (b) Call –off Orders: 10% of each Call Off Contract Price, submitted before signing Call Off Order, released to the supplier within thirty (30) days of delivery completion (c) Forfeiture: where a contract is not fully satisfactorily executed, the Performance Security shall be fully forfeited to the Procuring Entity as compensation, without prejudice to other penalties under the Act"

170. Addendum No. 3 amended the performance security requirements as follows:

"Performance Security: Modified to a two-tier framework model. 1) Framework Level: A Bank Guarantee of 200M of the Estimated Framework Value, valid for 365 days and renewable for Years 2 and 3. 2) Call-Off Level: 10% value of the specific call-off price, released within 30 days of delivery completion."

171. The Board further notes that Clarification issue no. 42 expressly sought confirmation as to whether the two securities were cumulatively required, in the following terms:

"Bidder's Query: Please confirm that both are cumulatively required: KES 200 million annual Framework Performance Security and an additional 10% of every Call-Off Contract Price"

172. In response to the above clarification, the 2nd Respondent stated:

"Performance security shall be: (a) Framework Contract: Performance security not more than ten percent (10%) of the estimated Framework Contract value, as a Bank Guarantee from a CBK-recognized bank, submitted before contract signing, valid for three Hundred and Sixty-Five (365) days, and renewed annually in Years two (2) and Three (3) failure to renew entitles the Commission to terminate the contract. (b) Call -off Orders: 10% of each Call Off Contract Price, submitted before signing Call Off Order, released to the supplier within thirty (30) days of delivery completion (c) Forfeiture: where a contract is not fully satisfactorily executed, the Performance Security shall be fully forfeited to the Procuring Entity as compensation, without prejudice to other penalties under the Act."

173. The Board notes from the foregoing provisions that the Tender Document requires both framework-level and call-off-level performance securities. However, the existence of two securities does not, in itself, establish that the statutory ceiling has been exceeded. The framework-level security is expressed by reference to the estimated Framework Contract value, while the call-off-level security is calculated by reference to the price of each individual call-off contract. The Applicant has not demonstrated that section 142(1) of the Act requires these securities to be aggregated, irrespective of the distinct contractual values to which they apply.
174. The Board has also considered the Applicant's contention that the framework-level guarantee is uncertain because Addendum No. 3 refers to a guarantee of KES 200,000,000 of the estimated Framework Contract value, while the clarification states that the security shall not exceed ten per cent of that value. The Board notes that the TDS and the clarification expressly state the ten per cent ceiling. Although the fixed amount in Addendum No. 3 may require the tenderer to establish its relationship to the estimated Framework Contract value, the Applicant has not placed before the Board evidence of that estimated value or demonstrated that the KES 200,000,000 requirement exceeds ten per cent of it. The Board is therefore not satisfied that the Applicant has established a contravention of section 142(1) of the Act on this ground.

175. The Board further notes that the Framework Contract is intended to operate over three years, with call-off orders issued as and when required. The annual renewal of the framework-level guarantee is expressly provided for in the TDS and Addendum No. 3. The Board finds that the requirement for renewal corresponds to the continuing duration of the Framework Contract. The Applicant has not demonstrated that the renewal requirement, considered in that context, contravenes section 142 of the Act or unlawfully restricts competition.
176. On forfeiture, section 142(2) of the Act expressly provides that, where a contract is not fully or well executed, the performance security shall unconditionally be fully seized by the procuring entity as compensation, without prejudice to other penalties provided for by the Act. The corresponding TDS provision states:

"(c) Forfeiture: where a contract is not fully satisfactorily executed, the Performance Security shall be fully forfeited to the Procuring Entity as compensation, without prejudice to other penalties under the Act"

177. The Board notes that this clause substantially reflects the consequence prescribed by section 142(2) of the Act. The Applicant's contention that full forfeiture necessarily converts the security into a penalty is not supported by the statutory text, which expressly contemplates full seizure

as compensation. The Board is therefore not persuaded that the forfeiture provision is unlawful merely because it provides for full forfeiture where the contract is not fully satisfactorily executed.

178. The Board has also considered the relevant General Conditions of Contract (GCC). GCC 18.2 provides:

"The proceeds of the Performance Security shall be payable to the Procuring Entity as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract."

179. GCC 32.1 further provides:

"The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure."

180. The Board notes that the contractual provisions address compensation for loss resulting from failure to perform and expressly recognise the effect of force majeure. Read together with section 142(2) of the Act, the provisions

do not, on the material placed before the Board, establish the unlawful or arbitrary forfeiture alleged by the Applicant.

181. Regarding the tender security, the Tender Document provides at ITT 8:

"All Tenders must be accompanied by a Tender Security of Kenya Shillings Forty Million (40M) from a reputable financial institution, Insurance Company or a banker's cheque payable to the Independent Electoral and Boundaries Commission and must be valid for Two Hundred and Seventy (270) days after bid submission deadline."

182. Addendum No. 3 provides:

"Tender Security: Fixed at KES 40 Million, valid for 270 days from the tender opening date. Acceptable Form(a) cash; OR (b) a bank guarantee; OR (c) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority (PPRA); OR (d) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya (CBK). Commercial banks are permitted to state a explicit calendar expiry date equivalent to Opening Date + 270 days"

183. The Board notes that the tender security is distinct from performance security. Section 142 of the Act regulates performance security and does not, by itself, establish that the amount or validity period of the tender security is unlawful. The Board further notes that Addendum No. 3 specifies the acceptable forms of tender security and its validity period. The Applicant has not demonstrated that the tender security requirement, considered alongside the amendment, violates section 60(1) of the Act or otherwise prevents fair and open competition.
184. The Board recognises that the provision of tender and performance securities may impose financial obligations on prospective tenderers. However, the existence of such obligations does not, without more, establish a violation of the Act or the constitutional principles governing public procurement. Having considered the statutory provisions and the relevant clauses of the Tender Document, Addendum No. 3 and the clarifications, the Board finds that the Applicant has not demonstrated that the two-tier performance security arrangement exceeds the ceiling prescribed by section 142(1) of the Act, that the forfeiture provision contravenes section 142(2) of the Act, or that the security requirements otherwise violate section 60(1) of the Act or Article 227(1) of the Constitution. Consequently, this sub-issue fails.

Whether the technical specifications, sample requirements and period allowed for preparation and submission of tenders were

lawful and consistent with the principles of fairness, transparency and competition.

185. The Applicant contended that the technical specifications, sample requirements and period allowed for preparation and submission of tenders were inconsistent with section 60(1) of the Act and Article 227(1) of the Constitution. It challenged, in particular, the requirement for 980 mm ballot formats, the retention of embossing despite objections that it increased production time and cost, and the requirement to submit samples incorporating all prescribed security features shortly before the tender closing date. The Respondents maintained that the specifications were within the procuring entity's discretion, that the Applicant had not demonstrated that the proposed alternatives were equivalent in all material respects, and that the clarifications did not introduce a wholly new requirement incapable of being met within the period remaining.

186. The Board has considered the parties' rival arguments, the relevant provisions of the Act, the Tender Document, Addendum No. 3 and the Clarifications. Section 60 of the Act provides as follows:

"60. Specific requirements

(1) An accounting officer of a procuring entity shall prepare specific requirements relating to the goods, works or services being procured that are clear, that give a correct and complete

description of what is to be procured and that allow for fair and open competition among those who may wish to participate in the procurement proceedings.

(2) The specific requirements shall include all the procuring entity's technical requirements with respect to the goods, works or services being procured.

(3) The technical requirements shall, where appropriate—

(a) conform to design, specification, functionality and performance;

(b) be based on national or international standards whichever is superior;

(c) factor in the life of the item;

(d) factor in the socio-economic impact of the item;

(e) be environment-friendly;

(f) factor in the cost disposing the item; and

(g) factor in the cost of servicing and maintaining the item.

(4) The technical requirements shall not refer to a particular trademark, name, patent, design, type, producer or service provider or to a specific origin unless—

(a) there is no other sufficiently precise or intelligible way of describing the requirements; and

(b) the requirements allow equivalents to what is referred to.”

187. The Board notes that section 60 of the Act requires the procuring entity to formulate clear and complete technical requirements that permit fair and open competition. It also recognises that technical requirements should, where appropriate, conform to design, specification, functionality and performance. The question is therefore not whether a procuring entity may prescribe demanding technical requirements, but whether the Applicant has demonstrated that the requirements challenged in this Request for Review were unlawful, unclear or unjustifiably restrictive of competition.

188. On the requirement for 980 mm ballot formats, Mandatory Requirement No. 6 of the Mandatory Technical Evaluation prescribed the following dimensions:

"6. Dimensions

***Dimensions – Senator, Member of the National Assembly,
County Woman Member to the National Assembly and
Member of the County Assembly***

i. A5 (148 × 210 mm) – 2–3 candidates

ii. 148 × 315 mm – 4–7 candidates

iii. 148 × 440 mm – 8–11 candidates

iv. 148 × 620 mm – 12–17 candidates

v. 148 × 780 mm – 18–22 candidates

vi. 148 × 980 mm – 23–29 candidates

vii. A3 (297 × 420 mm) or special size – 30 or more candidates

Dimensions – Presidential and Governor

i. A4 (210 × 297 mm) – 2–6 candidates

ii. 210 × 440 mm – 7–11 candidates

iii. 210 × 620 mm – 12–17 candidates

iv. 210 × 780 mm – 18–22 candidates

v. 210 × 980 mm or special size – 23 or more candidates

Note: Each sample to be submitted as listed above shall have minimum of 700 ballot papers well bounded”

189. The Board further notes that the ballot paper specifications prescribed the relevant 980 mm formats. Clause 4.4.6 of the ballot paper specifications provides:

"4.4.6 148mm x 980mm ballot paper booklet

The Senator, Member of the National Assembly, County Woman Member to the National Assembly and Member of the County Assembly ballot paper shall have a counterfoil piece and the vote casting piece with a perforation separation. The width of the counterfoil piece shall be 40 ± 1.0 mm and length, 148 ± 1.0 mm when tested in accordance with KS ISO 216."

190. Clause 4.6.3.5 of the ballot paper specifications provides:

"4.6.3.5 210mm x 980mm ballot paper booklet

When candidates are 23 or more, 210mm x 980mm ballot paper size or special size of the paper shall be used as specified by IEBC. When tested in accordance with KS ISO 216 the tolerance shall be ± 1.0 mm on width and length and ± 0.5 mm on successive sheets within a ballot booklet."

191. Further, Clarification issue no. 5 sought confirmation:

"whether the 980 mm ballot length is an absolute mandatory requirement for both sample evaluation and subsequent contract execution;"

192. The 2nd Respondent responded:

"980 mm ballot length is an absolute mandatory requirement for both sample evaluation and contract execution"

193. Clarification issue no. 8 sought confirmation whether bidders were required to submit samples of both the 148 × 980 mm and 210 × 980 mm formats. The response was:

"Yes, the 980 mm format remains mandatory, and bidders are required to submit samples of both the 148 × 980 mm and 210 × 980 mm formats"

194. The Board notes that the Tender Document prescribed different ballot dimensions according to the number of candidates, including the 980 mm formats for the specified candidate ranges. Although the specifications also refer to a special size in certain circumstances, the subsequent clarification expressly confirmed the 980 mm requirement for sample evaluation and contract execution. The Applicant has not demonstrated that the prescribed formats were incapable of accommodating the information and features required for the ballot papers, or that the alternatives it proposed would satisfy all the material requirements of the procurement.

195. The Board further notes that the Applicant's contention that a shorter format could achieve the same functional, security and legibility

requirements was not, on the material presented, supported by technical evidence demonstrating equivalence across the relevant requirements. The fact that a particular production facility may be unable to print a ballot of the prescribed length does not, without more, establish that the specification is unlawful or that it discriminates against a particular supplier. The Board is therefore not persuaded that the Applicant has established a violation of section 60 of the Act merely because the 2nd Respondent declined to accept the proposed alternative.

196. The Board has also considered the objection to the embossing requirement. Clause 4.3.6 of the ballot paper specifications provides:

"4.3.6 Embossing

The ballot paper shall be embossed at least once with words 'IEBC and the year of election' or any other as specified by IEBC. This shall be done using suitable mechanism without change in physical or chemical properties of the ballot paper. The embossed words shall clearly be seen when visually examined under normal light."

197. Mandatory Requirement No. 3 of the Mandatory Technical Evaluation further identifies the prescribed security features, including embossing, as follows:

"3. Security features

Ballot papers shall have the security features imparted by inks, dyes, electronic or suitable mechanisms.

i. Water Mark

At least one generic watermark is visible when visually examined under normal light.

ii. UV-sensitive security features

Security feature visible only under UV light.

iii. Anti-copy security features

When exposed to an imaging process such as photocopying or scanning, the copy or image displays clearly visible anti-copy features, such as the word 'Copy' written on the entire surface.

iv. Guilloche Security Patterns

Incorporate a uniquely generated guilloche security pattern embedded with variable data.

v. Micro text

Micro-text incorporating variable data

vi. Embossing

Embossed alphanumeric characters

vii. QR Code

Unique machine-readable QR code incorporating variable data”

198. The Board notes that Clarification issues no. 65 and 76 asked the 2nd Respondent to remove embossing on the grounds that it could restrict participation, increase production costs and reduce press speed, while other prescribed security features would continue to provide security. In both instances, the 2nd Respondent responded:

"the ballot paper specifications remain as is. Refer to clause 4.3 Security feature on page 73 for the ballot paper specifications"

199. The Board further notes that Addendum No. 3 expressly relaxed certain technical requirements while retaining embossing. It provided:

"TECHNICAL RELAXATION TO OPTIMIZE COST & TIMELINES:

- ***Serialization: Single-colour black tapered serialization is ACCEPTED (supersedes the expensive multi-colour tapered requirement).***
- ***Guilloche & Micro-text: Static guilloche patterns and static micro-text layouts are ACCEPTED (variable formats per page are not mandatory). Embossing: Retained strictly as blind embossing only (no metallic foil stamping required).***
- ***Core Non-negotiable Specifications: Custom primary watermarks, embedded UV security elements, anti-copy/antiscanner backgrounds, and anti-duplication QR codes remain strictly mandatory.***

• Form Variations: Ballot configurations must accommodate the statutory variants: President (1), Governor (47), Senator (47), County Woman Representative (47), Member of National Assembly/MP (290), and Member of County Assembly/MCA (1450).

• Tear Factor: Verified using standard KS ISO 1974 (Elmendorf method) parameters under Clause 4.11.”

200. The Board finds that Addendum No. 3 demonstrates that the 2nd Respondent reconsidered certain technical requirements and relaxed them to optimise cost and timelines, while retaining other features as mandatory. The Applicant has not placed before the Board evidence sufficient to establish that retaining embossing, in the form specified by the Addendum, was arbitrary or that the requirement rendered the procurement unfair or incapable of attracting competition. The objections concerning increased cost and reduced production speed, without supporting technical or other evidence demonstrating that the requirement was disproportionate to the procurement needs, do not establish a contravention of section 60 of the Act.

201. The Board now turns to the sample requirements. Clarification issue no. 35 asked:

"Bidder sought to know whether the samples must contain fully operational watermark, UV, micro text, guilloche, embossing, tapered serialization, anti-copy and QR features, or are representative/demo features acceptable?"

202. The 2nd Respondent responded:

"The samples must contain all security features as contained in the mandatory technical evaluation of samples page 30 of the tender document."

203. The Board notes that Mandatory Requirement No. 6 expressly required each sample to comprise a minimum of 700 ballot papers, well bound, in the prescribed dimensions. Mandatory Requirement No. 3 separately identified the security features required on ballot papers. The response to Clarification issue no. 35 confirmed that samples were required to contain the security features already prescribed in the Tender Document; it did not, on the material presented, establish that the 2nd Respondent had introduced an entirely new category of technical requirement through the clarification.

204. The Board has considered the Applicant's contention in its Further Affidavit that the sample matrix, comprising booklets of up to 700 ballot papers in twelve sizes, representative samples of every colour and all prescribed

security features, was clarified on 25th September 2026, six days before the closing date. The Applicant further asserted that preparation required artwork, plate-making, substrate sourcing and approximately twenty-one days of press time, and that requests for an extension were refused or deferred.

205. The Board notes that the tender was initially advertised on 11th August 2026, with a closing date of 1st September 2026. On 14th August 2026, the 2nd Respondent issued Addendum No. 1 notifying prospective tenderers that a corrected Tender Document had been issued and directing them to rely on the corrected version. Subsequently, Addendum No. 3, issued on 17th September 2026, extended the closing and opening date to 1st October 2026 at 11:30 a.m. and introduced the technical relaxations set out above. The clarifications in issue were issued on 25th September 2026, six days before the extended closing date.

206. The Board recognises that the period between the issuance of the clarifications and the closing date was short. However, the question is whether the clarifications introduced substantive new obligations that tenderers could not reasonably have anticipated from the Tender Document, or merely clarified the application of requirements that were already prescribed. In this regard, the requirement for samples comprising a minimum of 700 ballot papers in the prescribed dimensions appeared in Mandatory Requirement No. 6, while the required security features appeared in Mandatory Requirement No. 3. Clarification issue no. 35

confirmed that the samples were to contain those features. The Applicant's assertion that sample preparation required approximately twenty-one days is not, without further supporting evidence, sufficient to establish that the clarified requirements were incapable of being met within the extended tender period.

207. The Board further notes that Addendum No. 3 did not merely maintain every original technical requirement without adjustment. It expressly accepted single-colour black tapered serialization and static guilloche and micro-text layouts, and restricted embossing to blind embossing without metallic foil stamping. These relaxations are material to the Applicant's contention that the specifications and sample requirements imposed unnecessary production burdens. The Applicant has not demonstrated that the relaxations were insufficient to address the concerns raised or that the remaining requirements, considered as a whole, were incapable of being met by tenderers with the requisite technical capacity.

208. As regards the refusal to extend the tender period further, the Board finds that the fact that a bidder requested an extension does not, by itself, establish that the period allowed was unlawful or objectively inadequate. The relevant consideration is whether the time allowed, having regard to the requirements disclosed in the Tender Document and the subsequent clarifications and amendments, afforded prospective tenderers a reasonable opportunity to prepare and submit responsive tenders. On the material before it, the Board is not satisfied that the Applicant has

demonstrated that the clarifications issued on 25th September 2026 introduced requirements so materially different from those already prescribed that the extended closing date of 1st October 2026 necessarily defeated fair and open competition.

209. The Board is mindful that section 60(1) of the Act requires technical requirements to be clear, complete and capable of allowing fair and open competition. That obligation does not, however, mean that every technical specification must be relaxed whenever a bidder proposes an alternative or considers a requirement costly or inconvenient. The Applicant was required to demonstrate that the challenged requirements, viewed in their context and in light of the amendments and clarifications, were inconsistent with the Act or unlawfully restrictive of competition. The Board finds that the Applicant has not discharged that burden. Consequently, this sub-issue fails.

What orders should issue in the circumstances.

210. Having considered the parties' pleadings, affidavits, submissions and the applicable law, the Board has determined the substantive issues raised in the Request for Review. For the reasons set out in the preceding analysis, the Board has found that the Applicant has not established sufficient grounds to warrant the intervention sought in respect of the impugned Tender Document, Addendum No. 3 and the Clarifications. Accordingly, the Request for Review fails on its merits.

211. The Board must next consider the question of costs. Section 173(d) of the Act empowers the Board, upon completing a review, to order the payment of costs as between the parties to the review. The exercise of this power is discretionary and must be undertaken judicially, having regard to the circumstances of each case. In ***Republic vs Public Procurement Administrative Review Board & 2 Others Ex-Parte Higawa Enterprises Limited [2017] eKLR***, the High Court affirmed the principle that costs follow the event, while recognising that the Board's discretion in awarding costs must be exercised judicially and not capriciously or whimsically.
212. The general principles governing the award of costs were also considered by the Supreme Court in ***Jasbir Singh Rai & 3 Others vs Tarlochan Singh Rai & 4 Others [2014] eKLR***, where the Court affirmed that costs ordinarily follow the event, while emphasising that their award remains a matter of judicial discretion to be exercised having regard to the circumstances of each case, including the conduct of the parties and considerations of public interest.
213. In the present matter, the event is the dismissal of the Request for Review following the Board's determination that the Applicant has not established a violation of the Act or the constitutional principles governing public procurement warranting the intervention sought. The Respondents have

successfully defended the challenged procurement requirements and are therefore entitled to consideration for an award of costs.

214. The Board has also considered the nature and public importance of the subject procurement. Tender No. IEBC/OIT/02/2026-2027 concerns the Supply and Delivery of Ballot Papers, Tactile Folders, Register of Voters and Statutory Election Result Declaration Forms. The procurement relates directly to the conduct of elections and is therefore of significant public importance. While this consideration does not diminish a tenderer's statutory right to seek administrative review, it underscores the importance of ensuring that the procurement process proceeds to its lawful conclusion without avoidable delay.
215. Having considered the circumstances of the proceedings, the outcome of the Request for Review and the public interest in the timely conclusion of the subject procurement, the Board finds it appropriate to award costs to the Respondents.
216. Consequently, the instant Request for Review dated 30th September 2026 and filed on 1st October 2026, relating to Tender No. IEBC/OIT/02/2026-2027 for Supply and Delivery of Ballot Papers, Tactile Folders, Register of Voters and Statutory Election Result Declaration Forms is hereby disallowed as specified in the Final Orders section below.

FINAL ORDERS

217. In exercise of the powers conferred upon it by Section 173 of the Act, the Board makes the following orders in the instant Request for Review:

A. The Request for Review dated 30th September 2026 be and is hereby dismissed.

B. The Accounting Officer of the Independent Electoral and Boundaries Commission be and is hereby ordered to proceed with the tender proceedings in relation to Tender No. IEBC/OIT/02/2026-2027 for the Supply and Delivery of Ballot Papers, Tactile Folders, Register of Voters and Statutory Election Result Declaration Forms to their lawful conclusion.

C. The Applicant shall pay to the Respondents costs of the proceedings in the sum of KES 2,000,000.

Dated at NAIROBI, this 14th day of October 2026.

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PANEL CHAIRPERSON
PPARB

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SECRETARY
PPARB