

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 192/2026 FILED ON 30TH SEPTEMBER 2026

BETWEEN

LEADING EDGE LIMITED..... APPLICANT

VERSUS

ACCOUNTING OFFICER,

INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION.....1ST RESPONDENT

INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION.....2ND RESPONDENT

Review against the decision of the Accounting Officer, Independent Electoral & Boundaries Commission in relation to Tender No. IEBC/OIT/001A/2026 - 2027 for Supply, Delivery, Installation, Testing, Commissioning, Support and Maintenance of the Integrated Elections Management System (IEMS), Hardware Equipment and Accessories.

BOARD MEMBERS PRESENT

Ms. Alice Oeri	-	Vice Chairperson & Panel Chairperson
Eng. Lilian Ogombo	-	Member
Mr. Daniel Langat	-	Member

IN ATTENDANCE

Mr. Philemon Kiprop	- Board Secretary
Mr. Robert Mwangi	- Secretariat

PRESENT BY INVITATION

APPLICANT

Mr. Sang holding
brief for Mr. Murage

LEADING EDGE LIMITED

Advocate, T W Murage & Company Advocates

RESPONDENTS

ACCOUNTING OFFICER, INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION

INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION

Mr. Edwin Mukele	Advocate, Mukele Moni & Company Advocates
Mr. Moses Kipkogei	Advocate, Garane & Somane Advocates
Mr. Mwangi Kamau	Advocate, Garane & Somane Advocates
Ms. Elizabeth Onyango	Advocate, Mukele Moni & Company Advocates

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/01/2026 - 2027 for Supply, Delivery, Installation, Testing, Commissioning, Support and Maintenance of the Integrated Elections Management System (IEMS), Hardware Equipment and Accessories. The said tender was scheduled to close and be opened on 1st September 2026.

Submission of Bids and Tender Opening

2. The procurement proceedings relating to the aforesaid 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. 170 of 2026 dated 13th August 2026 before the Public Procurement Administrative Review Board (hereinafter referred to as "the Board") on 14th August 2026.

PPARB APPLICATION NO. 170 OF 2026

3. On 14th August 2026, the Applicant, Galadirel Investments Limited, through Musyoka David Vundi Advocates, filed a Request for Review dated

13th August 2026 together with a Statement dated 13th August 2026 made by its Director, David Odhiambo, which documents constituted PPARB Application No. 170 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/01/2026 – 2027 for the Supply, Delivery, Installation, Testing, Commissioning, Support and Maintenance of the Integrated Elections Management System (IEMS), Hardware Equipment and Accessories be and is hereby set aside.***
- c) THAT the Respondent be and is hereby ordered to specify the quantities, scope and/or estimated value of the goods and services to be procured in the Tender process.***
- d) THAT the Respondent be and is hereby ordered to reframe the experience and qualification requirements in strict compliance with the Evaluation Criteria in the tender document and not to tailor the tender requirements to vendor-driven procurement in favour of MIRU Systems Limited.***
- e) THAT the Respondent issue a corrected Tender document for Tender No. IEBC/OIT/01/2026 – 2027 for the Supply, Delivery, Installation, Testing, Commissioning, Support and Maintenance of the Integrated Elections Management System (IEMS), Hardware Equipment and Accessories.***

f) THAT the Respondent be and is hereby ordered to allow Electronic Tendering of Tender No. IEBC/OIT/01/2026 – 2027 for the Supply, Delivery, Installation, Testing, Commissioning, Support and Maintenance of the Integrated Elections Management System (IEMS), Hardware Equipment and Accessories.

g) THAT the Respondent be and is hereby ordered to issue the value of the Tender that justifies the provided Tender security and in compliance with Section 61 of the PPADA.

4. 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. 170 of 2026:

i. The Request for Review dated 13th August 2026 and filed on 14th August 2026 is hereby allowed in part.

ii. The Respondents are hereby directed to seek advice and technical support from the Public Procurement Regulatory Authority pursuant to Section 9(1)(g) of the Act, in respect of the deficiencies and areas requiring clarification identified by the Board in this Decision.

iii. The Respondents are hereby directed to review and make the necessary corrections, clarifications and/or amendments to the Tender Document in accordance with the findings of the Board contained in this Decision, including the matters identified in relation to the technical specifications, evaluation criteria, post-qualification and due diligence requirements, and the qualifications and compliance requirements applicable to key personnel.

iv. Upon undertaking the review and making the necessary corrections and/or amendments, the Respondents shall issue and publish an appropriate addendum to the Tender Document and accord prospective tenderers such further period as may be required by law to consider the amendments and prepare and submit their tenders.

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

5. Following the findings in PPARB Application No. 170 of 2026, on 17th September 2026, the Respondents advertised Tender No. IEBC/OIT/001A/2026–2027 for the Supply, Delivery, Installation, Testing, Commissioning, Support and Maintenance of the Integrated Elections Management System (IEMS), Hardware Equipment and Accessories

(hereinafter referred to as "the subject tender"). The tender was scheduled to close and be opened on 2nd October 2026.

6. On 18th September 2026, the Respondents issued Addendum No. 1, which primarily amended the requirements applicable at Stage B of the technical evaluation.
7. On 25th September 2026, the Respondents issued a Clarification addressing various issues raised by the candidates in relation to the subject tender.

PPARB APPLICATION NO. 192 OF 2026

8. On 30th September 2026, Leading Edge Limited, the Applicant herein, through T W Murage & Company Advocates, filed a Request for Review dated 29th September 2026, together with a Statement sworn on 29th September 2026 by Albert Wambulwa, the Applicant's Director (hereinafter collectively referred to as "the Request for Review"), seeking the following orders:

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

*ii. **THAT it be declared that the procurement proceedings in Tender No. IEBC/OIT/001A/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 (2nd October 2026) be extended as provided in order (I) below.

- iii. THAT the 1st Respondent be ordered to complete item 14 of the Qualification Form by stating the minimum key requirements by which a contract is "similar to the proposed Information System", and to reconcile the experience criteria in the Qualification Form and the Vendor Evaluation as to look-back period, unit of measure and the role (including as joint venture member or sub-contractor) in which experience may be gained.***
- iv. THAT the 1st Respondent be ordered to amend the Tender Document so that relevant experience includes voter registration systems, election management systems, national identity systems, civil registration systems, document issuance systems, passport systems, population registers, biometric enrolment platforms, AFIS/ABIS systems and equivalent nationwide government digital systems, and so that the customer may be an election authority, national***

identification authority, civil registration authority, ministry of interior, passport authority or equivalent government organization; or, in the alternative, to state the reasons, by reference to identified risks, for confining relevant experience to election management bodies.

- v. THAT the 1st Respondent be ordered to amend the Tender Document to provide that recommendation letters, project completion certificates, final acceptance certificates, operational acceptance certificates, performance certificates or equivalent documentary evidence issued by government customers shall be accepted, in place of "recommendation letters", and to incorporate the same in the Tender Document.***
- vi. THAT the 1st Respondent be ordered, pursuant to Article 227(2) of the Constitution and Part XII of the Act, to amend the Tender Document so that Kenyan manufacturers, systems integrators and small and medium enterprises are not confined to participation as a named local sub-contractor with no evaluated experience or financial standing, but may qualify to bid, whether alone, as a joint venture or consortium***

member, or as a sub-contractor whose experience and financial capacity are credited toward the qualification thresholds in proportion to its role and responsibilities; and that no qualification requirement in the Tender Document shall have the effect that the USD 50 million, 50,000-device, two-country, recommendation-letter, completion-certificate, turnover or financial-resources thresholds can only be satisfied by a single entity acting alone.

- vii. THAT the prohibition of joint ventures, consortia and reliance on sub-contractor experience 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; to permit experience to be demonstrated as prime contractor, consortium leader, consortium member or major sub-contractor where the tenderer shows its specific role and responsibilities; and to permit the financial capacity requirements to be met collectively by consortium members in proportion to their share of responsibilities.***

- viii. 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 labour) 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, software development, integration, support and sub-contracted work; (iii) the evidence and the stage of verification are stated; and (iv) the local representation requirement may be met by a joint venture member or sub-contractor.**
- ix. THAT the 1st Respondent be ordered to state the estimated value of the framework and the basis on which the turnover, financial-resources and business-volume thresholds and the tender security were set, and to reconsider and, if maintained to reconsider to the amount set.**
- x. THAT the mandatory sample-and-demonstration gate be set aside or, in the alternative, the 1st Respondent be ordered to define its scope, venue, environment, duration and evaluation criteria, and to distinguish**

critical deviations from deviations that may be rectified after award.

- xi. THAT the 1st Respondent be ordered to restrict security for performance, whether as performance security or retention, to an aggregate not exceeding the limit in section 142 of the Act, and to state the event on which any retention is released and whether it may be substituted by a guarantee.***
- xii. 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, and to remove the contradiction between the Tender Data Sheet and Section III.***
- xiii. 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.

xiv. 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.

xv. THAT the Respondents bear the costs of this Request for Review.

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

9. In a Notification of Appeal and a letter dated 30th September 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 30th September 2026.

10. On 30th September 2026, the Board Secretary issued a Mention Notice of even date notifying the parties that the Request for Review would be mentioned on 1st October 2026 at 11:00 a.m., for purposes of giving directions on its disposal.
11. On 1st October 2026, the Respondents filed a Memorandum of Appearance dated the same day, appointing G & A Advocates LLP and Mukele Moni & Company Advocates as their Advocates.
12. On 1st October 2026, when the matter came up for mention, the Board issued directions for the expeditious disposal of the Request for Review. The Respondents were directed to file and serve their responses and Written Submissions, together with any authorities relied upon, by 12:00 noon on 2nd October 2026. The Applicant was, in turn, directed to file and serve any Further Affidavit and Submissions, limited to matters arising from the Respondents' response, by 3:00 p.m. on 2nd October 2026. The Request for Review was scheduled for hearing on 2nd October 2026 at 4:00 p.m., with the hearing to be conducted virtually. The parties were directed to use the link provided in the Mention Notice and to ensure that all documents intended to be relied upon at the hearing were duly filed and served within the prescribed timelines. The Board further directed that the matter proceed on a fast-track basis, having regard to the public interest implicated by the subject procurement.

13. On 2nd October 2026, the Respondents filed a Memorandum of Response, together with a Replying Affidavit sworn by Fredrick Muema, the 2nd Respondent's Director, Supply Chain Management, and Written Submissions, all dated the same day. Pursuant to section 67(3)(e) of the Act, the Respondents also submitted to the Board the confidential documents relating to the subject tender.
14. On 2nd October 2026, the hearing did not proceed as scheduled and was adjourned to 5th October 2026 to allow the Interested Party to file its response.
15. On 5th October 2026, the Applicant filed a Further Affidavit sworn on 4th October 2026 by Evans Ochieng, the Applicant's Director, together with its Written Submissions and List of Authorities, both dated 5th October 2026.
16. When the matter came up for hearing on 5th October 2026, Counsel for the respective parties appeared before the Board. The Board confirmed that the pleadings then on record had been duly filed and sought confirmation that the parties had been served and were ready to proceed. Counsel for the Respondents indicated that he had only just been served with the Applicant's documents and required time to peruse them, and accordingly sought an adjournment. Counsel for the Applicant apologized for the late filing and service, explaining that the Applicant's lead Counsel, Mr. Murage, was indisposed and unable to attend the hearing. The Applicant consequently proposed that the matter be disposed of by way of written submissions. Counsel for the Respondents did not oppose this mode of disposal but sought leave to file a Further Affidavit and

Supplementary Submissions. The Applicant did not oppose the request. The Board accordingly granted the Respondents leave to file and serve their Further Affidavit and Supplementary Submissions by 3:00 p.m. on 6th October 2026 and directed that the matter be canvassed by way of written submissions.

17. On 6th October 2026, the Respondents filed a Further Affidavit sworn on the same day by Fredrick Muema, together with Further Written Submissions dated the same day.

PARTIES' SUBMISSIONS

Applicant's Submissions

18. The Applicant's Counsel submitted that Article 227(1) of the Constitution and sections 3, 58(2), 60(1) and 70(6)(a) of the Act require procurement requirements to be clear, objective, quantifiable and conducive to fair and open competition. Counsel accepted that a procuring entity has discretion to customize its tender documents and prescribe stringent requirements, but submitted that the discretion is not unfettered. Relying on ***PPARB Application No. 172 of 2026*** and ***PPARB Application No. 21 of 2025 Precision Experts Limited vs The Accounting Officer, Kenya Bureau of Standards***, Counsel contended that each requirement must have a rational connection to the subject matter and objectives of the procurement and must not unjustifiably undermine competition. Counsel distinguished ***Sicpa SA vs Public Procurement Administrative***

Review Board & 2 Others (Civil Appeal E474 of 2024) [2024] KECA 939 (KLR), submitting that the Applicant's complaint was not that the requirements were merely stringent, but that they were unclear, inconsistent, unexplained or contrary to the Act.

19. On the extension of time, Counsel submitted that the Respondents had treated the matter as an arithmetical question, whereas ITT 9.1 and 10.3 required the Respondents to issue an addendum where clarifications altered essential elements of the Tender Document and to extend the deadline as necessary. It was contended that the Clarifications of 25th September 2026 materially altered the Tender by, *inter alia*, defining the relevant Elections Technology experience, changing the scope of the supplies, addressing the margin of preference and introducing a guaranteed minimum order. Counsel submitted that the Clarifications were therefore not mere clarifications and that the Respondents had failed to demonstrate that they had considered what extension was necessary. Reliance was placed on ***PPARB Application No. 13 of 2021 Five Blocks Enterprises Limited vs Managing Director, Kenya Bureau of Standards***, in support of an extension following correction of the Tender Document.
20. On the experience requirements, Counsel submitted that Item 14 of the Qualification Form did not define what constituted a contract "similar to the proposed Information System" and therefore left the evaluators without an objective standard against which similarity could be assessed.

Counsel further submitted that the experience requirements, when read cumulatively with the Vendor Evaluation requirements and the restriction of relevant experience to Elections Management Bodies, imposed overlapping and inconsistent requirements. Counsel pointed to the further inconsistency between Item 14, which recognized experience acquired as a joint venture member or subcontractor, and the Clarifications, which prohibited reliance on such experience. Relying on ***PPARB Application No. 172 of 2026***, Counsel submitted that such inconsistencies introduced uncertainty into both the preparation and evaluation of tenders.

21. Counsel further submitted that the restriction of relevant experience to technology deployed by an Elections Management Body had not been rationally justified. The Applicant did not challenge the relevance of election-related experience, but contended that the Respondents had failed to explain why experience gained in other nationwide government biometric and registration systems, including national identity, civil registration, passport and population registry systems, was excluded notwithstanding the Respondents' acknowledgment that such systems may involve comparable technological components. Counsel consequently urged the Board either to require the Respondents to justify the restriction by reference to identified procurement risks or to permit comparable nationwide government biometric experience alongside an Elections Management Body reference. Counsel also sought clarification that certificates of successful implementation would be accepted in place of

recommendation letters where the Respondents had so stated in their Response.

22. Counsel submitted that the prohibition against joint ventures and reliance on subcontractor experience was similarly unsupported by sufficient justification. While accepting that the Respondents possessed discretion in the formulation of the requirement, Counsel maintained that the discretion remained subject to the Constitution and the Act. The reasons advanced by the Respondents, including the need for direct capacity, clear contractual responsibility and compliance with statutory timelines, were said to be inconsistent with the Tender Document, which contemplated manufacturers and subcontractors and already provided safeguards concerning responsibility and liability in the case of joint ventures. Counsel further relied on Regulation 148 of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as the "Regulations, 2020") to submit that the procurement framework itself contemplated arrangements between citizen and foreign contractors. The effect of the impugned restrictions, Counsel argued, was to require a single entity to satisfy all the experience, turnover, financial and device-count requirements, thereby excluding the possibility of combining capacities through partnerships.
23. On local content, Counsel submitted that the Tender did not properly give effect to section 157(9) of the Act and Regulation 165 of the Regulations, 2020. In particular, the requirement referred to "Kenyan" subcontractors

rather than citizen contractors; the prescribed formula included taxes, duties and the Capacity Building Levy in the denominator; the qualifying inputs did not expressly encompass software, integration, support and subcontracted work; and the qualifications of the local subcontractor could not be relied upon. Counsel further submitted that the local representation requirements constituted mandatory qualification requirements and that the Tender did not clarify whether they could be satisfied through a joint venture partner or subcontractor.

24. Counsel submitted that the Tender also failed to sufficiently describe the scope of the procurement against which the substantial turnover, financial resource and business-volume thresholds had been imposed. Relying on section 60(1) of the Act and Regulation 102(1) of the Regulations, 2020, Counsel contended that the quantities and scope of the framework procurement were not adequately stated in the Tender Document. Reliance was again placed on ***PPARB Application No. 13 of 2021 Five Blocks Enterprises Limited vs Managing Director, Kenya Bureau of Standards***. Counsel further submitted that, given the prohibition against joint ventures, the Respondents should either permit collective satisfaction of the financial thresholds or justify why a single entity was required to satisfy them.
25. Counsel also sought clarification of the requirements relating to the sample device and the payment milestone. On the former, Counsel relied on the Respondents' sworn position that the evaluation required only a sample

device and did not entail a live or end-to-end demonstration. On the latter, Counsel accepted the Respondents' position that the amount under SCC 12.1 was not an additional performance security, but submitted that the Tender should clarify whether the amount constituted a retention or payment milestone and the circumstances for its release.

26. On the margin of preference, Counsel submitted that the Tender Document was internally inconsistent, with Section III providing for a 15% margin of preference while ITT 36.2 and the Tender Data Sheet excluded it. Counsel contended that the subsequent Clarification removing the margin constituted a material alteration of the Tender within the meaning of section 75(1) of the Act and ought therefore to have been effected through an addendum and accompanied by a necessary extension of time. Relying on section 157(8)(b)(ii), section 155 of the Act, Regulation 164 of the Regulations, 2020 and ***PPARB Application No. 13 of 2021 Five Blocks Enterprises Limited vs Managing Director, Kenya Bureau of Standards***, Counsel submitted that the margin was mandatory where applicable. Counsel distinguished ***PPARB Application No. 170 of 2026*** on the basis that any exclusion of the preference was conditional upon compliance with the statutory process and production of evidence demonstrating the circumstances justifying the exclusion, which, Counsel submitted, had not been demonstrated in the present case.
27. Counsel submitted that the statutory timelines applicable to the procurement did not excuse non-compliance with the Act. The Applicant

was not asking the Board to prescribe the Respondents' procurement requirements, but to direct that the requirements already formulated be clarified, reconciled and brought into conformity with the law. Counsel maintained that the Applicant had demonstrated the requisite risk of loss under section 167(1) of the Act because the impugned requirements exposed it to exclusion from the procurement, and that it was not necessary for the Applicant to await the opening of tenders before establishing such risk.

Respondents' Submissions

28. The Respondents' Counsel submitted that section 60 of the Act empowers a procuring entity to prescribe requirements suited to the goods, works or services being procured, including technical and performance requirements. The impugned requirements were therefore formulated to meet the operational, technical and security needs of the procurement. Counsel relied on ***Republic vs Public Procurement Administrative Review Board; Accounting Officer Kenya Medical Supplies Authority & 2 others (Interested Parties); First Assurance Company Limited (Ex parte) [2023] KEHC 734 (KLR)*** and ***PPARB Application No. 74 of 2024 Celmel Insurance Agency vs Chief Executive Officer, Social Health Authority***, as affirmed in ***Republic vs Public Procurement Administrative Review Board & another; Celmel Insurance Agency (Ex parte) [2024] KEHC 13707 (KLR)***, for the proposition that a procuring entity is entitled to prescribe and

customise requirements to meet its procurement needs, subject to the requirements of the law and fair and open competition.

29. On the alleged introduction of new requirements, the Respondents' Counsel submitted that the minimum annual turnover and financial resources requirements of KES 5 billion each were already contained in the Tender Document, and that Addendum No. 1 merely corrected a formatting error which had affected their display. The same position applied to the requirements concerning the scanner and fingerprint sensor, which had already been included in the original Tender Document. Counsel therefore maintained that the Addendum did not alter the substantive qualification or technical requirements. Reliance was placed on ***Republic vs Public Procurement Administrative Review Board & 2 Others ex parte Industrial & Commercial Development Corporation***, for the proposition that correction of an error which does not alter the substance of the original tender does not constitute an alteration of the tender.
30. The Respondents' Counsel further submitted that the Clarifications dated 25th September 2026 merely explained requirements already contained in the Tender Document. In particular, the clarification concerning SD Cards confirmed that the Cards themselves would be procured separately, while the clarification on independent assurance confirmed an arrangement already contemplated under Clause 1.7.5. The clarification concerning the 50,000-device guaranteed minimum was similarly said not to introduce a

new subject matter, the Tender having contemplated up to 60,000 devices.

31. On the requirement for election technology experience, the Respondents' Counsel submitted that the requirement was rationally connected to the subject matter of the procurement and was intended to establish experience in the particular operational environment of electoral technology. Counsel maintained that experience in other biometric or government information systems, though technologically comparable, did not necessarily demonstrate experience in deploying and supporting technology in an electoral environment. The Respondents therefore contended that the 2nd Respondent was entitled, having regard to its constitutional mandate, to prescribe experience necessary to mitigate the risks associated with the procurement.
32. As regards joint ventures, the Respondents' Counsel submitted that the Tender Data Sheet expressly provided that joint venture participation was "NOT APPLICABLE" and that this specific provision prevailed over the general provisions on joint ventures in the Instructions to Tenderers. The prohibition was said to be justified by the need for unified contractual responsibility and accountability in the implementation of the integrated election technology system.
33. On local content, Counsel submitted that ITT 4.10 required foreign tenderers to provide a 40% Local Content Plan and identify a Kenyan

subcontractor, together with supporting documentation. The Respondents maintained that subcontracting was distinct from joint venture participation and provided a lawful mechanism for local participation without transferring to the subcontractor the qualifications or contractual responsibility of the principal tenderer.

34. The Respondents' Counsel submitted that the allegation of a cumulative 20% performance security requirement arose from a misreading of the Tender Document. GCC 13.3.1 required a single performance security of 10% of the Contract Price, while the provisions concerning milestone payments dealt only with the timing of payment and did not constitute a second security requirement.
35. Counsel further submitted that the requirement to submit a sample device did not require a live end-to-end demonstration of the election technology. The sample was to be evaluated against the prescribed specifications on a YES/NO basis, and the relevant clarification merely confirmed that position. Similarly, the Respondents maintained that there was no ambiguity regarding margin of preference since ITT 36.2 expressly provided that it would not apply.
36. On the timing of the procurement, the Respondents' Counsel submitted that the subject procurement had to be considered against the statutory timelines applicable to electoral technology. Counsel relied on ***Raila Amolo Odinga & another vs Independent Electoral and***

Boundaries Commission & 2 others (Presidential Election Petition 1 of 2017) [2017] KESC 42 (KLR) (20 September 2017) and ***Khelef Khalifa & 2 Others vs Independent Electoral and Boundaries Commission & Another [2017] eKLR***, and maintained that sufficient time was required not only for procurement but also for implementation, testing, verification and deployment of the system within the prescribed electoral timelines.

37. The Respondents' Counsel submitted that the Applicant had conflated a clarification with an amendment. Relying on ***Republic vs Public Procurement Administrative Review Board Ex parte Kenya Power & Lighting Company Limited; Energy Sectors Contractors Association & Zoec-Zhepedc-Nginu (Interested Parties) (Miscellaneous Civil Application 36 of 2020) [2020] KEHC 10455 (KLR) (Judicial Review) (14 August 2020)***, Counsel maintained that a clarification serves to remove ambiguity and explain an existing requirement. It was therefore submitted that the Clarifications dated 25th September 2026 did not alter any essential element of the Tender and consequently did not trigger the amendment procedure under section 75 of the Act or ITT 9.1.
38. On the question of extension of time, the Respondents' Counsel submitted that the issuance of a clarification or addendum did not, of itself, create an automatic obligation to extend the tender period. The tender had been published on 17th September 2026 with a submission deadline of 2nd

October 2026, while Addendum No. 1 was issued on 18th September 2026. The Clarifications of 25th September 2026 were said merely to explain existing requirements and therefore did not constitute an amendment requiring an extension under section 75(5) of the Act or ITT 10.3. Counsel relied on ***PPARB Application No. 109 of 2023 Niavana Agencies Limited vs Accounting Officer, Kenya Power & Lighting Company PLC & Another*** in support of the Respondents' position that the procuring entity retains discretion to determine whether an extension is necessary.

39. The Respondents' Counsel further submitted that certain matters raised by the Applicant in its Further Affidavit had not been pleaded in the Request for Review and therefore ought not to be determined. These included the alleged introduction of new requirements through the correction of the Tender Document, the timing for submission and issuance of clarifications, the alleged cumulative experience requirements, the local content calculation and the alleged non-compliance with section 157(9) of the Act. Counsel contended that determination of those matters would expand the scope of the proceedings and prejudice the Respondents' right to a fair hearing. Reliance was placed on ***Vickers Security Service Limited -vs- Public Procurement Administrative Review Board & 3 Others, Civil Appeal No. E143 of 2025, Gandy vs Caspar Air Charters Ltd [1956] 23 EACA 139*** and ***David Sironga ole Tukai vs Francis Arap Muge & 2 Others [2014] eKLR***.

40. In the alternative, and without prejudice to that objection, the Respondents' Counsel submitted that the impugned matters were substantively provided for in the Tender Document. Counsel maintained that Items 13 and 14 of the Qualification Form addressed general and specific experience respectively, while the Vendor Evaluation requirements served a separate purpose of assessing demonstrated capacity in election technology. On local content, Item 98 of the Clarifications was said to have prescribed the applicable calculation formula and the qualifying costs and evidence. Counsel submitted that ITT 4.10 required foreign tenderers to source at least 40% of their contract inputs from national suppliers and contractors and that the requirement to identify a Kenyan subcontractor did not permit circumvention of the statutory requirements governing citizen participation under section 157(9) of the Act.

BOARD'S DECISION

41. The Board has considered each of the parties' cases, documents, pleadings, written submissions, authorities together with 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 Applicant's Further Affidavit introduced new grounds of review beyond those pleaded in the Request for Review.

B. Whether the Tender Document, read together with Addendum No. 1 dated 18th September 2026 and the Clarifications dated 25th September 2026, complied with the Constitution and the Act.

C. What appropriate orders should issue in the circumstances.

Whether the Applicant's Further Affidavit introduced new grounds of review beyond those pleaded in the Request for Review

42. The Respondents contended that the Applicant's Further Affidavit introduced new grounds of review which had not been pleaded in the Request for Review. In particular, they objected to the allegations that the correction of the Tender Document introduced new requirements rather than merely rectifying layout defects; that the Clarifications were issued on the deadline for submitting questions and that the Tender Document prescribed inconsistent periods for submitting questions; that the Respondents imposed cumulative and overlapping experience requirements, including Vendor Evaluation requirements tied to the years 2021 to 2025; that the Respondents failed to address the Applicant's complaints concerning the local content calculation formula and qualifying local inputs; and that the Tender Document failed to require foreign tenderers to source from citizen contractors as contemplated under section

157(9) of the Act. The Respondents maintained that these matters were new grounds which the Applicant could not introduce through its Further Affidavit.

43. The Board considers it necessary to determine this objection as a preliminary matter before proceeding to the substantive issues. The scope of the grounds properly before the Board defines the controversy submitted for review and the matters upon which the Board is called upon to exercise its jurisdiction. The Board must therefore establish whether the impugned allegations merely elaborate on the grounds contained in the Request for Review or introduce distinct complaints that were not part of the original challenge.
44. The Board observes that its review jurisdiction is invoked through a Request for Review under section 167 of the Act. The Request for Review is the initiating pleading through which an applicant identifies the procurement decision or conduct challenged, the grounds upon which the challenge is founded and the manner in which the applicant considers itself aggrieved. The grounds set out therein define the scope of the dispute submitted for determination. The subsequent filing of affidavits and submissions enables the parties to adduce evidence, provide further particulars and develop their respective legal arguments, but does not dispense with the requirement that the case for determination remain anchored to the grounds upon which the review was instituted.

45. This position accords with the settled principle that parties are bound by their pleadings. Pleadings define the issues in controversy, give the opposing party fair notice of the case it must meet and guide the adjudicating body in determining the dispute presented before it. Accordingly, an affidavit filed after the Request for Review may clarify or particularise a pleaded ground, respond to the opposing party's case or advance further arguments in support of the original complaint. It cannot, however, be used to introduce a distinct ground of review that was not raised in the Request for Review. To permit such a course would allow an applicant to circumvent the statutory timelines governing the institution of review proceedings by introducing fresh grounds through subsequent affidavits, thereby altering the scope of the dispute after the proceedings have commenced.
46. In determining whether a contention constitutes a new ground, the Board must examine the substance of the original pleading alongside the subsequent affidavit. The fact that an argument is expressed more specifically, supported by additional particulars or developed by reference to a statutory provision does not, without more, make it a new ground. The relevant consideration is whether the underlying complaint was already raised in the Request for Review or whether the subsequent affidavit introduces a distinct basis for challenging the procurement that materially changes the case the Respondents were called upon to answer.

47. Applying these principles to the first objection, the Board notes that paragraphs 16 to 19 of the Request for Review expressly challenged the correction of the Qualification Form through Addendum No. 1, the restoration or alteration of technical requirements, the issuance of Clarifications shortly before the tender submission deadline and the refusal to extend that deadline. The Applicant alleged that material requirements had not been fully disclosed in the tender as initially published and that the subsequent Addendum and Clarifications did not afford prospective tenderers sufficient time to prepare their bids. The further allegation that the correction introduced new requirements rather than merely rectifying layout defects is a development of that original complaint. It concerns the very question already raised in the Request for Review, namely whether the Addendum corrected an incomplete publication or substantively altered the requirements in a manner that affected the fairness of the tender process. The Board therefore finds that this allegation does not constitute a new ground of review.
48. The same conclusion applies to the complaint concerning the timing of the Clarifications and the periods prescribed for submitting questions. The Request for Review had already challenged the timing and substantive effect of the Clarifications dated 25th September 2026, including their effect on the scope of the procurement and the time remaining before the submission deadline. The further allegation that the Clarifications were issued on the deadline for submitting questions, and that the Tender Document prescribed inconsistent periods for asking questions,

particularises the Applicant's existing challenge to the adequacy of the time afforded to tenderers to prepare their bids. The Board finds that this allegation does not introduce a new ground of review and will consider it as part of the original challenge concerning the completeness and clarity of the tender requirements and the adequacy of the time allowed for tender preparation.

49. Regarding the alleged cumulative and overlapping experience requirements, the Board observes that Grounds Two and Three of the Request for Review expressly challenged the undefined specific experience requirement under Item 14 of the Qualification Form and the restriction of relevant experience to election technology deployed by an Elections Management Body. The Request for Review also set out the Vendor Evaluation requirements, including the cumulative business threshold of USD 50 million, the supply of at least 50,000 devices, experience in two countries, recommendation letters from five clients and completion certificates relating to election systems carried out during the years 2021 to 2025. Further, Ground Four challenged the effect of the prohibition on joint ventures and reliance on subcontractor references, alleging that the financial and experience thresholds would have to be met by a single entity.
50. The Applicant's further argument that the requirements were cumulative or overlapping, including its complaint concerning the fixed Vendor Evaluation period ending in 2025, therefore develops the original

contention that the qualification and evaluation requirements, considered individually and cumulatively, were unclear, restrictive or disproportionate. The relevant requirements and their respective periods were already identified in the Request for Review. The Board accordingly finds that this allegation does not constitute a new ground of review and will consider it as part of the original challenge to the legality, clarity and proportionality of the qualification and evaluation criteria.

51. The Board next considers the objection concerning the local content calculation formula and qualifying local inputs. Ground Five of the Request for Review expressly challenged the formulation of the 40% Local Content Plan, the definition and calculation of qualifying Kenyan costs, the requirement for local representation and the failure of the Respondents' clarifications to address whose office and staff could satisfy the local representation requirements where a joint venture partner or subcontractor was involved. The Applicant specifically pleaded that the Respondents' answer, which reproduced a list of qualifying local costs, did not address the questions raised.
52. The Applicant's further contention that the Respondents failed to address its complaints concerning the local content formula and qualifying local inputs therefore falls squarely within the original challenge. The specific cost components and qualifying inputs are particulars of the formula and local participation requirements already impugned in Ground Five. The Board finds that these arguments do not constitute new grounds of review

and will consider them as part of the original challenge to the clarity, consistency and legality of the local content and local representation requirements.

53. The Respondents, lastly, objected to the allegation that the Tender Document failed to require foreign tenderers to source from citizen contractors as contemplated under section 157(9) of the Act. The Board notes that Ground Five of the Request for Review expressly invoked the statutory framework governing preferences and local participation under Part XII of the Act, challenged the 40% local content requirement and alleged that the requirement had been formulated outside the applicable statutory framework. The Applicant also contended that the requirements did not provide a clear means of recognising or verifying local inputs and participation.
54. The allegation concerning section 157(9) of the Act is a further legal argument advanced in support of the original challenge to the formulation and legality of the local content requirements. It concerns the statutory basis and legal effect of the local participation requirements already placed in issue by the Request for Review. The Board finds that the fact that the Applicant subsequently identified a specific statutory provision in support of that challenge does not, in the circumstances of this case, transform the argument into a new ground of review. The Board will therefore consider the argument as part of the original challenge to the local content requirements.

55. The Board is mindful that, after the Applicant filed its Further Affidavit, the Respondents were granted an opportunity to file a Further Replying Affidavit and did so. That opportunity enabled the Respondents to address the additional arguments raised by the Applicant. The Board nevertheless emphasises that the opportunity to respond does not, by itself, enlarge the scope of the Request for Review. The proper basis for determining the present objection remains the comparison between the original grounds and the impugned allegations. Having undertaken that comparison, the Board finds that the five categories of allegations identified by the Respondents are developments, particulars or legal arguments in support of complaints already pleaded in the Request for Review.
56. Accordingly, the Board finds and holds that the Respondents' objection that the Applicant's Further Affidavit introduced new grounds of review is without merit and is dismissed. The allegations challenged by the Respondents shall not be excluded as fresh grounds; they shall be considered, to the extent relevant, as part of the original grounds pleaded in the Request for Review. The Board will proceed to determine the substantive issues on that basis.

Whether the Tender Document, read together with Addendum No. 1 dated 18th September 2026 and the Clarifications dated 25th September 2026, complied with the Constitution and the Act

57. The central question arising from the Request for Review is whether the Tender Document, as amended by Addendum No. 1 dated 18th September 2026 and read together with the Clarifications dated 25th September 2026, complied with the Constitution and the Act. The Applicant's complaints concern, among other matters, the completeness and clarity of the tender requirements, the qualification and evaluation criteria, the restrictions on joint ventures and subcontracting, the local content requirements, the financial thresholds, the sample requirements and the provisions on preference. These complaints arise substantially from the terms of the Tender Document and the effect of the subsequent Addendum and Clarifications.
58. The Board considers it appropriate to determine these complaints under one overarching issue because the Addendum and the Clarifications are intertwined with the Tender Document and must be examined in their proper context. The legality of the requirements challenged by the Applicant cannot be assessed by isolating the original Tender Document from the subsequent documents that amended or explained its terms. Equally, the legal effect of the Addendum and Clarifications must be determined by reference to the original requirements and the applicable statutory framework. The Board will therefore consider the distinct complaints arising from these documents under separate sub-issues, while determining the overarching question of their compliance with the Constitution and the Act.

Whether the issuance of Addendum No. 1 and the Clarifications, and the time allowed for tender preparation thereafter, complied with section 75 of the Act

59. The first sub-issue concerns the effect of Addendum No. 1 and the Clarifications on the Tender Document, and whether the Respondents were required to extend the deadline for submission of tenders to allow prospective tenderers sufficient time to take account of the changes or explanations communicated. The Applicant initially contended that the Qualification Form in the Tender Document as published contained layout defects that obscured some of the requirements. It further alleged that the subsequent Addendum did more than correct those defects, as it restored or introduced requirements and altered or added technical specifications relating to scanners and fingerprint sensors. The Applicant also challenged the timing of the Clarifications, arguing that they were issued too close to the submission deadline and that the Respondents ought to have allowed additional time for candidates to prepare or amend their tenders.
60. The Respondents' position, in substance, was that the Addendum corrected the presentation of the Tender Document and that the Clarifications addressed questions raised by candidates without materially altering the procurement requirements. They maintained that the documents did not occasion a change requiring an extension of the submission deadline under section 75(5) of the Act. The Board must

therefore determine the applicable statutory obligation and whether, in the circumstances of this procurement, the timing and effect of the two documents required the Respondents to extend the deadline.

61. Section 75 of the Act provides as follows:

"75. Modifications to tender documents

(1) A procuring entity may amend the tender documents at any time before the deadline for submitting tenders by issuing an addendum without materially altering the substance of the original tender.

(2) An amendment may be made on the procuring entity's own initiative or in response to an inquiry by a candidate or tenderer.

(3) A procuring entity shall promptly provide a copy of the addendum to each person to whom the procuring entity provided copies of the tender documents.

(4) The addendum shall be deemed to be part of the tender documents.

(5) If the tender documents are amended when the time remaining before the deadline for submitting tenders is less than one third of the time allowed for the preparation of tenders, or the time remaining is less than the period indicated in instructions to tenderers, the accounting officer of a procuring entity shall extend the deadline as necessary to allow the amendment of the tender documents to be taken into account in the preparation or amendment of tenders."

62. A reading of section 75 of the Act reveals that the Act recognises the possibility that tender documents may require amendment before the submission deadline. Such an amendment may be initiated by the procuring entity or arise from an inquiry by a candidate. The statutory mechanism for effecting an amendment is the issuance of an addendum, which, by virtue of section 75(4) of the Act, becomes part of the tender documents. The power to amend is, however, subject to the limitation in section 75(1) of the Act that the amendment must not materially alter the substance of the original tender.
63. A clarification serves a different purpose. In its ordinary procurement sense, a clarification explains or elucidates an existing requirement so that candidates may understand what the procuring entity requires. It does not, merely by being issued, amend the tender documents. The distinction is material because section 75(5) of the Act is expressly concerned with the amendment of tender documents and the time required to take account of that amendment. Nevertheless, the legal effect of a document is determined by its substance and effect, rather than the label assigned to it. A genuine explanation of an existing requirement does not, without more, constitute an amendment attracting the mandatory extension contemplated by section 75(5) of the Act.
64. The Board further observes that section 75(5) of the Act establishes two circumstances in which the accounting officer is required to extend the submission deadline as necessary. The first arises where the time

remaining before the deadline is less than one third of the time originally allowed for preparation of tenders. The second arises where the time remaining is less than the period indicated in the Instructions to Tenderers. The two circumstances are expressed disjunctively. Accordingly, even where the remaining time exceeds one third of the original preparation period, the obligation to extend the deadline may still arise if the remaining time is less than the period stipulated in the Instructions to Tenderers.

65. The obligation under section 75(5) of the Act is not discretionary once either statutory condition is met. The accounting officer must extend the deadline for such period as is necessary to allow tenderers to take the amendment into account in preparing or amending their tenders. The provision does not, however, require an automatic extension whenever an addendum is issued. The obligation depends on the timing of the amendment in relation to the original preparation period and the period specified in the Instructions to Tenderers. The length of any extension must be sufficient for the purpose identified in the statute, having regard to the nature and effect of the amendment.
66. In the present case, the Tender Document was published on 17th September 2026, with the deadline for submission and opening of tenders scheduled for 2nd October 2026. Addendum No. 1 was issued on 18th September 2026, one day after publication of the Tender Document. The Clarifications followed on 25th September 2026. The Request for Review was filed on 30th September 2026, before the scheduled deadline.

Consequently, pursuant to section 168 of the Act, the procurement proceedings were suspended and the tenders were not opened.

67. On the first limb of section 75(5) of the Act, the period allowed for preparation of tenders, calculated from publication on 17th September 2026 to the scheduled deadline of 2nd October 2026, was approximately fifteen calendar days. Addendum No. 1 was issued on 18th September 2026, when approximately fourteen days remained before the deadline. The remaining period was therefore not less than one third of the original preparation period. On the dates before the Board, the first statutory condition for a mandatory extension was not satisfied when the Addendum was issued.
68. The position concerning the Clarifications requires a distinction to be drawn between their timing and their legal character. The Clarifications were issued on 25th September 2026, approximately seven days before the scheduled submission deadline. If, as the Respondents maintained, the Clarifications merely explained existing requirements without changing them, their issuance did not, of itself, trigger the extension obligation under section 75(5) of the Act. If, however, any of the responses substantively altered the requirements of the Tender Document, the Board would have to consider that alteration as an amendment in substance and determine whether either of the statutory conditions for extending the deadline was met.

69. The Board has considered the Applicant's contention that the Clarifications were issued too close to the deadline, leaving insufficient time to seek further explanations or prepare a responsive tender. The Board accepts that the question is not simply whether the documents were issued before the deadline. Section 75(5) of the Act expressly recognises that an amendment made before the deadline may nevertheless require an extension where the remaining time falls below either of the prescribed thresholds. However, the Applicant's concern about the practical time available cannot, without more, displace the specific test established by the statute. The Board must determine whether the Clarifications constituted amendments and, if so, whether the remaining period was less than one third of the preparation period or less than the period indicated in the Instructions to Tenderers.
70. On the material before the Board, the fact that the Clarifications were issued seven days before the scheduled deadline does not, by itself, establish that either statutory threshold had been crossed. The original preparation period was approximately fifteen calendar days, and seven days remained after the Clarifications were issued. That period exceeded one third of the original preparation period. Further, the Applicant's contention that the Tender Document contained different periods for submitting questions does not, without establishing the applicable period prescribed by the Instructions to Tenderers and demonstrating that the remaining time fell short of it, establish a breach of the second limb of section 75(5) of the Act. The Board must apply the statutory conditions to

the tender timetable and requirements established by the record, rather than infer a mandatory extension solely from the proximity of the Clarifications to the deadline.

71. The Board is also mindful that the Request for Review was filed on 30th September 2026, before the scheduled submission and opening date. Section 168 of the Act consequently operated to suspend the procurement proceedings, and the tenders were not opened. This fact explains why the procurement did not proceed to opening on 2nd October 2026. It does not, however, determine whether the Respondents had complied with section 75 of the Act before the Request for Review was filed. That question must be answered by reference to the nature and timing of the Addendum and Clarifications and the requirements of section 75(5) of the Act, rather than by reference to the subsequent suspension of the procurement proceedings.
72. The Board therefore finds that section 75 of the Act does not impose an automatic obligation to extend the submission deadline merely because an addendum or clarification is issued. The obligation arises where an amendment is made within either of the periods specified in section 75(5) of the Act, and the extension must be sufficient to enable tenderers to take the amendment into account. In this case, Addendum No. 1 was issued when approximately fourteen days remained before the deadline, while the Clarifications were issued when approximately seven days remained. On the dates established, neither issuance, considered solely by

reference to the one-third threshold, required a mandatory extension. Nor has the Applicant established, for purposes of this sub-issue, that the remaining period was shorter than the applicable period prescribed in the Instructions to Tenderers.

73. For these reasons, the Board finds and holds that the Applicant has not established a breach of section 75(5) of the Act on the ground that the Respondents failed to extend the submission deadline following the issuance of Addendum No. 1 and the Clarifications. This finding is confined to the question of the statutory obligation to extend the deadline. Whether particular provisions of the Addendum or the Clarifications substantively altered the original requirements, materially affected the substance of the tender, or introduced requirements that were unclear, inconsistent or otherwise unlawful remains to be considered under the relevant sub-issues below. Accordingly, this sub-issue is determined against the Applicant and is dismissed.

Whether the general and specific experience requirements and the Vendor Evaluation criteria were clear, objective and compliant with section 80 of the Act

74. The Board has considered the Applicant's challenge to the clarity and proportionality of the experience and qualification requirements, including Items 13 and 14 of the Qualification Form and the Vendor Evaluation Criteria introduced through Addendum No. 1. The complaints raise related

but distinct questions: whether the criteria sufficiently identify the experience and qualifications a bidder must demonstrate, and whether the experience demanded is reasonably connected to the nature and scale of the procurement.

75. Item 13 of the Qualification Form provides as follows:

"2.4.1 General Experience

Experience under Information System contracts in the role of prime supplier, management contractor, JV member, or subcontractor for at least the last 5 years prior to the applications submission deadline"

76. Item 14 provides as follows:

"2.4.2 Specific Experience

Participation as a prime supplier, management contractor, JV member, sub-contractor, in at least 2 contracts within the last 10 years, each with a value of at least 2 Billion Kenya Shillings, that have been successfully and substantially completed and that are similar to the proposed Information System. [Specify minimum key requirements in terms of physical size, complexity, methods, technology and/or other characteristics from those described in Section VII, Procuring Entity's Requirements]"

77. The applicable statutory framework is section 80 of the Act, which provides, in the relevant part

"80. Evaluation of tenders

(1) The evaluation committee appointed by the accounting officer pursuant to section 46 of this Act, shall evaluate and compare the responsive tenders other than tenders rejected.

(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered.

(3) The following requirements shall apply with respect to the procedures and criteria referred to in subsection (2)—

(a) the criteria shall, to the extent possible, be objective and quantifiable;”

78. The Board understands the above provision to require the procuring entity to evaluate tenders against the criteria disclosed in the Tender Document and to formulate those criteria, to the extent possible, in terms that permit objective and consistent application. The tenderer must be able to ascertain what is required to qualify and the basis upon which its compliance will be assessed. However, the requirement that criteria be objective and quantifiable to the extent possible does not mean that every aspect of technical experience must be reduced to a numerical measure. Qualitative assessment may be necessary, provided it is guided by sufficiently identified characteristics and does not leave the evaluation to arbitrary discretion.
79. The Board finds that Items 13 and 14 address different aspects of experience. Item 13 concerns general experience in Information System contracts over the five years preceding the submission deadline. Item 14 requires participation in at least two qualifying contracts over the preceding ten years, each valued at not less than KES 2 billion, successfully and substantially completed, and similar to the proposed Information System. The different periods are therefore not inherently contradictory. They apply to distinct requirements and may be read together.

80. The Board has also considered Form EXP-2, which sets out the information to be provided by a tenderer to demonstrate specific experience. The Board observes that Form EXP-2 requires a tenderer to identify its previous contracts and provide information on their value, dates, role and the characteristics relevant to the assessment of similarity. In particular, it expressly identifies amount, physical size, complexity, methods or technology, and key activities as matters against which similarity is to be described. Read together with Item 14 and the technical requirements of the proposed Information System, these particulars provide an identifiable framework for assessing the relevance of previous contracts. The fact that similarity requires an assessment of technical characteristics does not, in itself, render the criterion unclear or incapable of objective application.
81. The Board has further considered the Vendor Evaluation Criteria introduced through Addendum No. 1. Under the headings of "Hardware and Technology Ownership", "Firm's Experience in Electoral Technology Business" and "Operational Capacity", the criteria require bidders to provide evidence of technology ownership or dealership through a manufacturer's certificate or authorisation; evidence of having been in the similar business of supplying devices, hardware equipment and accessories for the preceding five years, supported by certified contracts and purchase orders; and evidence of cumulative business of at least USD 50 million during 2021, 2022, 2023, 2024 and 2025 in the supply, delivery,

installation, testing, commissioning, support and maintenance of election technology software, hardware equipment and accessories, supported by certified contracts and corresponding purchase orders.

82. The criteria further require evidence of having supplied at least 50,000 devices during 2021 to 2025; experience in supplying, delivering, installing, testing, commissioning, supporting and maintaining election technology software, hardware equipment and accessories in at least two countries during the same period, supported by certified contracts or purchase orders; recommendation letters from five clients on the implementation of election systems; completion certificates from three clients on the implementation of election systems carried out during 2021 to 2025; a detailed support and maintenance plan; proof of ICT technical support staff with a locally registered office in the country; and a one-year warranty together with an extended two-year warranty for all software and hardware components.
83. The Board finds that these requirements address different aspects of a bidder's experience and operational capacity. The requirements relating to prior contracts, business value, device volumes, implementation in two countries, client recommendations and completion certificates seek to establish relevant experience and evidence of successful performance. The support and maintenance plan, local technical support arrangements and warranty requirements address the bidder's ability to support the system following deployment. The criteria also specify documentary evidence

through which compliance is to be demonstrated and, in several instances, set measurable thresholds. The use of a YES/NO response does not, by itself, render the evaluation subjective where compliance is assessed against the stated requirement and the prescribed evidence.

84. The Board must, however, distinguish the clarity of the requirements from their proportionality. A criterion may be clearly expressed but still be challenged as unnecessarily restrictive. Equally, a criterion is not unlawful merely because it prescribes a minimum level of experience or limits the relevant experience to a particular field. The question is whether the requirement bears a reasonable relationship to the subject matter, complexity and scale of the procurement, and whether the Applicant has demonstrated that it unnecessarily restricts competition.
85. In considering that question, the Board has regard to Section V of the Tender Document, which describes the Kenya Integrated Electoral Management System as an integrated system comprising specialised election-related software and hardware, intended to support functions including voter registration and verification, candidate registration and management, and transmission of election results. The technical requirements also contemplate system integration, deployment at a national scale, and continuing technical support and maintenance. In that context, the requirements relating to previous election-technology business, the volume of devices supplied, implementation experience, support arrangements and warranties are capable of serving the legitimate

purpose of establishing a bidder's capacity to deliver and support the system.

86. The Board has also considered the Applicant's complaint that the criteria restrict qualifying experience to election technology and exclude experience in comparable biometric or government information systems. The Board recognises that experience in other systems may demonstrate relevant technical and operational capability, depending on the systems' characteristics and demands. However, the use of biometric technology or the performance of information-management functions does not, without more, establish that another system is materially comparable to an integrated electoral management system. Conversely, the fact that the procurement concerns an electoral system would not, by itself, justify excluding all experience in other systems that may demonstrate materially comparable complexity and capability. The restriction must be considered against the requirements of the particular procurement.
87. On the material before it, the Board is not persuaded that the Applicant has sufficiently demonstrated that the requirement for election-technology experience is arbitrary or bears no reasonable relationship to the system being procured. Nor has the Applicant established that the stated experience periods, contract thresholds, device volumes, documentary requirements and operational-capacity criteria are inherently incapable of objective application or have been shown to be disproportionate to the procurement.

88. The Board now turns to the restrictions on joint venture participation and reliance on subcontractors. ITT 4.1 generally permits a tenderer to comprise a firm or a combination of entities participating as a joint venture, whether under an existing agreement or an agreement to be entered into, supported by a Form of Intent. It further provides for joint and several liability of joint venture members and requires the nomination of a representative authorized to conduct business on behalf of the joint venture. The Tender Data Sheet, however, expressly states that joint venture participation is "NOT APPLICABLE". The introductory provision of the TDS stipulates that its specific provisions prevail over the ITT in the event of a conflict.
89. The Board finds that these provisions must be read together. ITT 4.1 sets out the general position on joint venture participation, while the TDS specifies the position applicable to this particular procurement. In view of the express priority accorded to the TDS, the entry stating that joint venture participation is not applicable operates as a restriction on participation in this tender as a joint venture. The fact that the general ITT provision provides for joint ventures does not, in itself, create an inconsistency that makes the applicable restriction indeterminate. The tender documents identify which provision governs the present procurement.

90. The Board emphasizes, however, that clarity as to the existence of a restriction is distinct from the legality and proportionality of that restriction. The fact that the TDS prevails over the ITT resolves the interpretative question but does not, without more, establish that the exclusion is justified under the Constitution and the Act. The restriction must also be considered in light of the nature of the procurement, the qualification requirements imposed and the Applicant's contention that the exclusion unnecessarily limits competition.
91. The Respondents justified the restriction on the basis that the procurement concerns a sensitive and specialized electoral system requiring integrated delivery, deployment, support and maintenance. They maintained that requiring a single principal tenderer would provide a clear point of contractual responsibility and reduce the risk of divided accountability, coordination difficulties and disputes among participating entities. The Board accepts that the procuring entity is entitled to take account of the technical complexity, operational risks and accountability requirements associated with the system when determining appropriate qualification and contract-management arrangements. The issue, however, is whether those considerations reasonably support the particular restriction adopted.
92. The Board has considered the Applicant's argument that the prohibition on joint ventures requires one entity to satisfy the substantial experience and financial thresholds independently, notwithstanding that a joint venture may bring together entities with complementary technical

expertise, experience and resources. The Board recognizes that the exclusion of joint ventures may limit the ability of otherwise capable entities to combine their qualifications for purposes of the tender. That consequence does not, by itself, render the restriction unlawful. Its legality must be assessed against the procurement requirements and the justification advanced for requiring a single tendering entity.

93. In the present case, the procurement concerns an integrated system requiring the supply and integration of hardware and software, nationwide deployment, and continuing technical support and maintenance. The Respondents' concern that a single principal tenderer should bear clear responsibility for delivery and performance is therefore relevant to the procurement. Further, the Tender Document does not merely require a tenderer to demonstrate general information-system experience; it prescribes experience and operational-capacity requirements directed at the delivery and support of election technology. The Applicant has not sufficiently demonstrated that the decision to require one principal tendering entity, in the context of these requirements, was arbitrary or unrelated to the needs of the procurement.
94. The Board nevertheless distinguishes the exclusion of a joint venture as the tendering entity from the question whether a tenderer may demonstrate its own experience through contracts previously performed as a joint venture member or subcontractor. Items 13 and 14 expressly recognize experience acquired in those roles. The Board does not consider

these provisions to be inherently inconsistent with the TDS restriction. The former concern the relevance of a tenderer's past experience, while the latter concerns the form in which a tenderer may participate in the present procurement. A tenderer may therefore have experience gained as a member of a previous joint venture without being permitted to submit the present tender as a joint venture.

95. The same distinction must be drawn in relation to reliance on a proposed subcontractor's experience or financial capacity. The Respondents maintained that a subcontractor may be engaged for purposes such as satisfying the local content requirements, but that the principal tenderer must independently satisfy the qualification criteria. The Board recognizes that permitting subcontracting for a defined portion of the contract does not necessarily require a procuring entity to attribute the subcontractor's entire experience or financial capacity to the principal tenderer. Equally, the mere recognition of past subcontracting experience under Items 13 and 14 does not, without further provision, establish a right to rely on a proposed subcontractor to satisfy every qualification requirement.
96. The relevant question is whether the Tender Document clearly identifies the qualifications that must be satisfied by the principal tenderer and those, if any, that may be demonstrated through another entity. Read with the TDS restriction on joint ventures and the Respondents' stated requirement that the principal tenderer independently satisfy the qualification criteria, the tender establishes that subcontracting does not

convert the principal tenderer into a joint venture or automatically permit it to aggregate the subcontractor's qualifications. The Applicant has not demonstrated that the distinction between recognizing experience acquired in a previous subcontract and relying on a proposed subcontractor to satisfy the present qualification requirements is, in itself, unlawful.

97. The Board has also considered the Applicant's reliance on the provisions permitting manufacturer or dealer authorization. The requirement for a manufacturer's certificate or authorization serves a different purpose from the rules governing joint venture participation and subcontracting. Manufacturer or dealer authorization establishes the tenderer's authority or relationship in respect of the relevant products or technology; it does not, by itself, make the manufacturer or dealer a joint venture member or transfer its experience and financial capacity to the tenderer. Similarly, the requirement for a Kenyan subcontractor under the local content framework does not necessarily entitle a tenderer to rely on that subcontractor's qualifications for all purposes. These arrangements must be assessed according to their respective functions under the Tender Document.
98. The Board has considered the cumulative effect of the qualification thresholds and the restriction on joint venture participation. It is mindful that demanding experience, financial capacity and operational capability from a single tenderer may narrow the field of eligible participants.

Nevertheless, the existence of such an effect does not, without further demonstration, establish that the requirements are disproportionate or unlawfully restrictive. In this case, the Applicant has not sufficiently demonstrated that the Respondents' requirement for a single principal tenderer, considered alongside the specialized and integrated nature of the system, lacks a reasonable justification or that the qualification criteria could not reasonably be applied in the manner prescribed.

99. Accordingly, the Board finds that Items 13 and 14, read together with Form EXP-2, the technical requirements and the Vendor Evaluation Criteria, provide an identifiable framework for assessing general experience, specific experience and operational capacity. The Applicant has not established that the different experience periods are contradictory, that the criteria are incapable of objective application, or that the experience requirements have been demonstrated to be disproportionate or unlawfully restrictive of competition. The Board further finds that the TDS clearly excludes joint venture participation in the present procurement, notwithstanding the general provision in ITT 4.1, and that the Applicant has not sufficiently established that the restriction, or the requirement that the principal tenderer independently satisfy the qualification criteria, is unlawful or disproportionate in the circumstances of this procurement.
100. For these reasons, the Applicant's challenge to the clarity, objectivity and proportionality of the experience and qualification criteria, including the

prohibition on joint venture participation and the restrictions on reliance upon subcontractors, fails.

Whether the local content, local representation and citizen participation requirements were lawful, clear and capable of objective application

101. The Applicant challenges the local content and local representation requirements in the Tender Document, particularly the computation of the 40% local content requirement, the extent to which the experience and resources of a named Kenyan subcontractor may be relied upon, and whether the local representation requirement may be satisfied through a Joint Venture partner or subcontractor. The Applicant also questions the consistency of these requirements with the statutory framework governing citizen participation in public procurement.
102. The relevant statutory framework is section 157 of the Act, which governs participation in preference and reservation schemes. Section 157(1) of the Act provides that candidates shall participate in procurement proceedings without discrimination, except where participation is limited in accordance with the Act. Section 157(3) of the Act further requires preferences and reservations to be non-discriminatory in respect of the targeted groups and to allow competition among eligible persons.

103. Of particular relevance is section 157(9) of the Act, which provides as follows:

"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."

104. The provision imposes a mandatory local sourcing requirement on foreign tenderers participating in international tenders. Its application must be distinguished from the requirements applicable to tenderers who do not fall within that category.

105. The corresponding provision in the Tender Document is ITT 4.10, which provides as follows:

"4.10 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the

Procuring Entity determine if this condition is met shall be provided in for this purpose is be provided in 'SECTION III-EVALUATION AND QUALIFICATION CRITERIA, Item 9'."

106. The provision requires foreign tenderers to demonstrate compliance with the 40% local sourcing requirement through documentary evidence and refers them to Section III, Item 9, for the information required to establish compliance.
107. The Board observes that section 157(9) of the Act refers to sourcing at least 40% of supplies from citizen contractors, whereas ITT 4.10 refers to 40% of contract inputs, including supplies, subcontracts and labour, sourced from national suppliers and contractors. The provisions are therefore not expressed in identical terms. However, the difference in wording, without further demonstration of its legal effect, does not by itself establish that the requirement in ITT 4.10 is unlawful. The question is whether, read together with the other provisions of the Tender Document and the applicable statutory framework, the requirement imposes an obligation inconsistent with the Act. On the material presented, the Applicant has not sufficiently demonstrated that the difference in terminology, in itself, renders the requirement unlawful.
108. The Board further notes that the Tender Document requires foreign tenderers to submit a Local Content Plan in Form 8 and identify a Kenyan subcontractor in Form 30, supported by a duly executed Subcontractor's

Agreement in Form 29. It also identifies categories of local expenditure that may be taken into account, including local labour, project management, professional services, transport, warehousing, security, insurance and packaging. These provisions establish a documentary mechanism through which foreign tenderers are to demonstrate their proposed local participation.

109. The Board has considered the clarification sought at paragraph 98 of the Clarifications concerning the computation of the 40% Local Content Plan under Form 8. The tenderer sought confirmation whether the percentage was to be calculated against the total contract price, including recurrent costs, and whether the value of software development by a Kenyan subcontractor, including the transfer of source code under GCC 15.4, would count fully towards the required percentage.

110. The Respondents provided the following formula:

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

111. The Respondents further identified qualifying costs as Kenyan-flag shipping, Kenyan clearing services, inland transport, warehousing, security, material handling, local insurance, local labour, local project management, local packaging and local professional services. They also

required, at tender stage, a duly completed qualification form, a breakdown of costs and commitment letters or memoranda of understanding with Kenyan firms, with final verification through invoices at call-off.

112. The Board notes that the clarification identifies the denominator for the calculation, the categories of expenditure recognized as local costs and the documentary evidence required to support the Local Content Plan. These particulars provide a basis for tenderers to prepare their plans and for the Evaluation Committee to assess the declared local expenditure. The response did not, however, expressly resolve whether all recurrent costs were included or how the value of software development and source-code transfer was to be treated. The Board does not consider that omission, without more, sufficient to invalidate the requirement. The Applicant has not demonstrated how the unresolved aspects materially affected its ability to prepare a responsive tender or established that the prescribed method of calculating local content was contrary to the Act.

113. The Board has also considered the Applicant's contention that the prohibition on Joint Ventures undermines the local content requirement. In this regard, the Board distinguishes between participation in a procurement through a Joint Venture and the engagement of a subcontractor by the principal tenderer. A Joint Venture comprises entities participating collectively as tenderers, whereas a subcontractor undertakes an identified portion of the contract under the responsibility of the principal

tenderer. The engagement of a subcontractor does not, without more, make that subcontractor a joint tenderer or automatically attribute its qualifications to the principal tenderer.

114. In the present procurement, the Tender Document provides for the identification of a Kenyan subcontractor in Form 30 and the execution of a Subcontractor's Agreement in Form 29. This mechanism enables a foreign tenderer to demonstrate its proposed local participation through subcontracting without necessarily participating through a Joint Venture. The Applicant has not demonstrated that the prohibition on Joint Ventures, considered alongside this separate mechanism for local participation, makes compliance with ITT 4.10 impossible or otherwise contravenes the Act. The Board therefore finds that this aspect of the challenge has not been established.

115. The Board has further considered paragraph 62 of the Clarifications, in which a tenderer sought confirmation whether deployments undertaken by a named subcontractor, identified in Form 30 and supported by a Subcontractor's Agreement in Form 29, could be aggregated with the tenderer's own deployments to satisfy the requirement for election-technology supply and installation in at least two countries during the period 2021–2025. The response was that the tender required evidence that the bidder had supplied at least two countries within the specified period.

116. The Board observes that the response did not expressly address whether a subcontractor's experience could be aggregated with that of the principal tenderer. Nevertheless, the requirement to demonstrate experience in supplying election technology to at least two countries is distinct from the requirement to identify a subcontractor for local participation or contract performance. The existence of a subcontracting arrangement does not, in itself, establish that the subcontractor's past experience must be attributed to the principal tenderer for evaluation purposes. The Applicant has not demonstrated, by reference to the applicable qualification criteria, that the treatment of subcontractor experience rendered the evaluation requirement unlawful or incapable of objective application. The Board therefore finds no sufficient basis to invalidate the requirement on this ground.
117. On the related question of financial qualification, paragraph 99 of the Clarifications sought confirmation whether a named Kenyan subcontractor was required to submit its own audited financial statements. The Respondents clarified that the financial evaluation under Section III applied only to the principal tenderers. The Board considers that this response identifies the entity whose financial capacity is subject to evaluation and clarifies that a named Kenyan subcontractor is not independently required to satisfy the principal tenderer's financial qualification requirements. The Applicant has not demonstrated that this clarification is inconsistent with the Act or the stated evaluation criteria.

118. The Board has also considered Clarification No. 9, which sought to establish whether the local representation requirement could be satisfied through a Joint Venture partner or subcontractor possessing a locally registered office and ICT technical support staff in Kenya, rather than through the lead tenderer itself. The clarification also sought to establish whose office, staffing and 75% Kenyan-employment plan would be assessed. The response identified categories of local expenditure, including Kenyan-flag shipping, Kenyan clearing services, inland transport, warehousing, security, material handling, local insurance, local labour, local project management, local packaging and local professional services.
119. The Board acknowledges that the response did not directly answer whether the office, staff and employment plan of a Joint Venture partner or subcontractor could satisfy the local representation requirement. The response instead addressed categories of qualifying local expenditure. However, the inadequacy of that response does not, without further analysis of the actual local representation criterion and its effect on the procurement, automatically establish that the requirement is unlawful. The Applicant has not sufficiently demonstrated that the terms of the Tender Document necessarily prohibited reliance on the resources of a named subcontractor, or that the uncertainty identified rendered the requirement incapable of objective application or materially prejudiced its participation. The Board therefore finds that the Applicant has not established a sufficient basis for granting relief on this ground.

120. The Board reiterates that section 157(9) of the Act specifically concerns foreign tenderers participating in international tenders. The Applicant's assertion that it is wholly Kenyan-owned is relevant to the applicability of that statutory requirement to it. However, the Applicant's ownership status does not, by itself, resolve every question concerning the legality of the local content, local representation or subcontracting provisions. Those requirements must be assessed in the context of the Tender Document and the applicable statutory framework. On the evidence presented, the Applicant has not established that the requirements contravene section 157 of the Act or any other identified provision of the Act.
121. In reaching its determination, the Board has considered the relevant provisions of the Tender Document, the Clarifications and the statutory framework governing local participation in public procurement. The Board recognizes that certain responses could have addressed the questions raised more directly. Nevertheless, the Applicant has not sufficiently demonstrated that the identified shortcomings rendered the impugned requirements unlawful, discriminatory or incapable of objective application, or that they otherwise establish a breach of the Act warranting the orders sought.
122. Accordingly, the Board finds that the Applicant has not discharged its burden of establishing that the impugned local content, local representation and citizen participation requirements contravened the Act. This ground of review therefore fails and is dismissed.

Whether the financial qualification requirements, in light of the non-disclosure of the estimated tender value and the time allowed for submission of supporting financial evidence, were lawful and consistent with the principles of fair competition.

123. The Applicant challenges the financial qualification requirements prescribed under Items 11 and 12 of the Qualification Form, namely a minimum average annual turnover of KES. 5 billion and access to or availability of financial resources of at least KES. 5 billion. It contends that the estimated value of the framework and the unit value of the devices were not disclosed, making it impossible to assess the proportionality of the thresholds. It further argues that financial capacity should be capable of aggregation among members of a consortium and that the time allowed for submission of additional audited financial evidence was insufficient.
124. The Board has considered the allegation that the financial thresholds were introduced through Addendum No. 1 dated 18th September 2026. The Respondents maintain that the requirements were contained in the original Tender Document and that the Addendum merely corrected a page-layout or formatting error that had caused the relevant information to display improperly when the Tender Document was initially uploaded.
125. The Board has examined Items 11 and 12 of the Qualification Form as appearing in the original Tender Document and the Addendum. Item 11,

under Clause 2.3.2, requires a minimum average annual turnover of KES. 5 billion, calculated by reference to total certified payments received for contracts in progress or completed within the preceding five years. Item 12, under Clause 2.3.3, requires a tenderer to demonstrate access to or availability of financial resources, including liquid assets, unencumbered real assets, lines of credit and other financial means, sufficient to meet a minimum cash-flow requirement of KES. 5 billion, excluding contractual advance payments.

126. The comparison of the two documents establishes that the requirements were already contained in the original Tender Document. The Board therefore finds that Addendum No. 1 did not introduce new financial qualification thresholds or impose additional financial obligations upon tenderers. The Applicant's contention to that extent is unsupported by the record.
127. The Board has considered the Applicant's further contention that the thresholds are disproportionate because the estimated value of the framework and the unit value of the devices were not disclosed. In this regard, sections 58(2) and 70(3) of the Act require tender documents to contain sufficient information to promote fairness, transparency and competition among prospective tenderers. The question is whether the information provided was insufficient to permit fair competition, thereby rendering the impugned requirements unlawful.

128. The Board observes that the two requirements address distinct aspects of a tenderer's financial capacity. The average annual turnover requirement assesses the tenderer's historical business activity over a specified period, while the financial resources requirement assesses its ability to meet the cash-flow demands of the contract. The fact that both thresholds are set at KES. 5 billion does not, in itself, establish that they are duplicative or unreasonable.
129. The Board further recognizes that the Respondents, as the procuring entity, are responsible for identifying the capacity required to deliver the goods and services being procured. This consideration is particularly relevant to the present procurement, which concerns an integrated elections management system and related equipment and services necessary for the conduct of a general election. The Respondents have a legitimate interest in ensuring that the successful tenderer possesses sufficient financial capacity to perform the contract. Nevertheless, the requirements remain subject to the applicable principles of fairness, transparency and competition.
130. The burden rests upon the Applicant to demonstrate that the impugned thresholds are unlawful, arbitrary or unduly restrictive. The Applicant has pointed to the contemplated supply of up to 60,000 devices, with a guaranteed minimum of 50,000, and the absence of a disclosed estimated framework value. However, it has not sufficiently demonstrated how those circumstances establish that the thresholds are disproportionate to the

procurement requirements or that the non-disclosure of the estimated value rendered the financial criteria incapable of fair application. The Board is therefore not persuaded that the absence of the estimated framework value, without more, establishes a violation of sections 58(2) or 70(3) of the Act.

131. The Board has also considered the Applicant's reliance on section 61 of the Act. That provision regulates tender security, including the requirement that tender security be stated as an absolute value and not exceed two per cent of the tender value as valued by the procuring entity. It does not prescribe the financial qualification thresholds applicable to tenderers or require such thresholds to be calculated as a percentage of the estimated contract value. Accordingly, section 61 of the Act does not provide a basis for invalidating the turnover and financial resources requirements in issue.

132. As regards the proposed aggregation of financial capacity among members of a consortium, the Board notes that this contention is premised on the availability of Joint Venture participation. The legality of the restriction on Joint Venture participation has been considered under the preceding issue. Having determined that issue, the Board finds no basis for separately invalidating the financial qualification requirements merely because the Applicant would prefer to satisfy them through the combined resources of consortium members. The Applicant has not otherwise demonstrated that the prescribed financial criteria contravene the Act.

133. The Board has further considered the complaint that the time allowed for submission of additional audited financial evidence was insufficient. A tenderer challenging the adequacy of a compliance period must place sufficient material before the Board to demonstrate why the period allowed was impracticable in the circumstances. This includes explaining the nature of the evidence required, the steps reasonably necessary to obtain it and how the available time impeded compliance. Where additional time is alleged to have been necessary, the Applicant should provide a factual basis for that contention. In the present case, the Applicant has not sufficiently demonstrated why the period available was inadequate, what additional period was reasonably necessary, or how the timeline materially prejudiced its participation in the procurement.
134. The Board also notes that the financial thresholds were contained in the original Tender Document and were not introduced by the Addendum. The correction of the page-layout or formatting error did not, therefore, create the underlying financial qualification obligations. In the absence of sufficient evidence demonstrating that the correction materially impaired the Applicant's ability to comply with those existing requirements, the Board finds no basis for concluding that the time allowed rendered the procurement unlawful.
135. Having considered the foregoing, the Board finds that the Applicant has not demonstrated that the financial qualification thresholds were

introduced by the Addendum, that they were arbitrary or disproportionate, or that the absence of a disclosed estimated framework value or the time allowed for submission of financial evidence contravened sections 58(2) or 70(3) of the Act, section 61 of the Act, or Article 227(1) of the Constitution. Accordingly, this ground of review fails and is hereby dismissed.

Whether the sample submission requirements were clear and whether the Clarifications introduced an additional live demonstration requirement

136. The Applicant challenges the clarity of the sample submission requirements under Section III of the Tender Document. It accepts the Respondents' sworn position that the mandatory requirement is to submit a sample device branded with the manufacturer's name and that no live, end-to-end demonstration of the integrated elections management system is required. However, it contends that Clarification No. 65, which requires submission of a complete sample of the kit to be supplied, is inconsistent with the requirement to submit a sample device, since the two requirements differ in scope, cost and logistical implications.
137. The Respondents maintain that Section III, Preliminary Mandatory Evaluation Criteria, Item 8 requires submission of a sample device branded with the manufacturer's name, which is evaluated on a Yes/No basis against the prescribed specifications. They further contend that neither the Tender Document nor the Clarifications require tenderers to establish

an operational end-to-end election system or demonstrate live integration of the ABIS backend, results transmission server and tallying systems at the evaluation venue.

138. The Board has examined Section III, Preliminary Mandatory Evaluation Criteria, Item 8, which provides that the tenderer “MUST submit a sample device branded with manufacturers name.” The Board notes that the provision expressly requires submission of a sample device but does not expressly prescribe a live demonstration, proof of concept or establishment of an operational end-to-end election system at the evaluation venue.
139. The Board has also considered Clarification No. 65, in which a candidate sought clarification on whether the mandatory hardware sample was limited to the biometric device itself or extended to the full accessory kit, including the power bank, rubber protection case, charger, padded carrying case, tamper-evident seals, SD card and ICAO photo backdrop. The response was that a “complete sample of the kit to be supplied” was required. The Board finds that this clarification addresses the composition of the physical sample to be submitted and makes clear that the sample is to comprise the complete kit proposed for supply, rather than the biometric device alone.
140. The Board acknowledges the Applicant’s contention that submission of a complete kit entails different costs and logistical considerations from

submission of a bare device. However, the fact that the clarification specifies the accessories to accompany the device does not, without more, establish that the requirement is unlawful or incapable of objective application. The response to Clarification No. 65 identifies the scope of the sample required and enables tenderers to understand what they are expected to submit. The Applicant has not sufficiently demonstrated that this requirement contravenes the applicable procurement law or imposes an unjustifiable restriction on competition.

141. The Board has further examined Clarification No. 144, in which a tenderer sought clarification on the processor clock-speed specification and whether bidders would be required to conduct a live demonstration or proof of concept during technical evaluation. The response was that "bidders [were] to comply with the required specification." Read in the context of the question and the existing tender requirements, the response did not expressly introduce a live demonstration or proof-of-concept requirement. Neither Item 8 nor Clarification No. 144 expressly requires tenderers to establish a functioning end-to-end election system at the evaluation venue.

142. The Board therefore finds that Clarifications Nos. 65 and 144 address distinct matters. Clarification No. 65 specifies the composition of the physical sample to be submitted, while Clarification No. 144 does not establish an additional requirement for a live demonstration of the integrated election system. The Board also notes that the Applicant

expressly accepts the Respondents' sworn position that no live, end-to-end demonstration is required. The Respondents shall accordingly be held to that position and shall not require tenderers to establish an operational end-to-end election system or conduct a live demonstration of the integrated systems at the evaluation venue.

143. In the circumstances, the Board finds that the Applicant has not established that the sample submission requirements, as clarified, introduced an unlawful live demonstration obligation, were incapable of objective application, or otherwise contravened the applicable procurement law. This ground of review therefore fails and is hereby dismissed.

Whether the performance security and the final payment milestone under SCC 12.1 imposed an unlawful or unclear financial obligation

144. The Applicant initially contended that GCC 13.3.1, which requires performance security of 10% of the Contract Price, read together with SCC 12.1(f), which provides for a 10% payment upon Operational Acceptance of the System as an integrated whole, effectively imposed a cumulative 20% performance security contrary to section 142 of the Act. However, in its Further Affidavit, the Applicant expressly stated that it no longer pursued the contention that SCC 12.1 imposed a second performance security contrary to that provision, and instead asked that the

Respondents be held to their averments that the two provisions serve different purposes.

145. The Respondents maintain that GCC 13.3.1 provides for a single performance security of 10% of the Contract Price, excluding Recurrent Costs, while SCC 12.1 sets out the contractual payment milestones, including final payment of 10% upon Operational Acceptance of the System as an integrated whole. They submit that the latter is a portion of the Contract Price payable upon fulfilment of a contractual milestone and does not constitute an additional performance security.
146. Section 142(1) of the Act provides that a successful tenderer shall submit performance security equivalent to not more than 10% of the contract amount, subject to the applicable Regulations. The Board has examined GCC 13.3.1, which requires the Supplier to provide security for the due performance of the Contract in the amount and currency specified in the SCC, and SCC 12.1(f), which provides for payment of 10% of the entire Contract Price, exclusive of Recurrent Costs, as final payment upon Operational Acceptance of the System as an integrated whole.
147. On their wording, the two provisions address distinct contractual obligations. GCC 13.3.1 concerns security furnished by the Supplier to secure due performance of the Contract, whereas SCC 12.1(f) identifies a milestone upon which a portion of the Contract Price becomes payable. The fact that the final payment is conditional upon Operational Acceptance

does not, without more, convert that payment into performance security within the meaning of section 142 of the Act. The Board therefore finds no sufficient basis to treat the two amounts as cumulative performance security for purposes of that provision.

148. The Board has also considered Clarification No. 96, in which the Respondents confirmed that the 10% Complete System Integration retention money under SCC 12.1 was “entirely separate from and additional to” the 10% Performance Security under GCC 13.3. The Board acknowledges that the description of the amount as “retention money” differs from the characterization of it as final payment under SCC 12.1(f). Nevertheless, the clarification, read together with the underlying payment provision, does not establish that the Supplier is required to furnish a second security. Rather, it confirms that the amount payable upon final Operational Acceptance is distinct from the performance security furnished under GCC 13.3.1. The Respondents shall be held to their position that only one performance security, of 10% as prescribed under GCC 13.3.1 and subject to the applicable contractual terms, is required.

149. The Applicant further contends that the retention arrangement is unclear and imposes an undue financial burden because the Tender Document does not sufficiently specify when final Operational Acceptance will occur or whether the amount may be released against a guarantee. The Board recognizes that payment conditions should be sufficiently clear to enable tenderers to assess and price their contractual obligations. However, the

Applicant has not sufficiently demonstrated, by reference to the relevant contractual provisions or other evidence, that the payment milestone is incapable of objective application, that the timing of Operational Acceptance is so uncertain as to undermine fair competition, or that the absence of an alternative guarantee mechanism renders the arrangement unlawful.

150. The Board is therefore not persuaded that the Applicant has established a violation of section 142 of the Act or demonstrated that the payment arrangement, as presented in the material before it, contravenes section 60(1) of the Act or Article 227(1) of the Constitution. The Applicant's concern regarding the terminology used in Clarification No. 96 is noted, but that difference in description, without sufficient demonstration of a material legal or competitive prejudice, does not warrant the relief sought. This ground of review accordingly fails and is hereby dismissed.

Whether the exclusion of the margin of preference was lawful under the Act.

151. The Applicant contends that the Tender Document contained conflicting provisions on the application of a margin of preference. It points to Item 6 of Section III, which provides for a 15% margin of preference, and ITT 36.2 of the Tender Data Sheet, which states that a margin of preference shall not apply. The Applicant further contends that the Respondents' clarification of 25th September 2026, issued seven days before the tender

submission deadline, did not cure the alleged inconsistency in sufficient time and that the exclusion of a margin of preference was contrary to the statutory framework on preferences and reservations, particularly in light of the requirement for local content.

152. The Respondents maintain that ITT 36.2, read together with the Tender Data Sheet, expressly excludes a margin of preference. They contend that Item 6 of Section III sets out the methodology for applying a margin of preference where applicable, but does not override the specific provision in the Tender Data Sheet. The Respondents also rely on the Board's determination in PPARB Application No. 170 of 2026, which considered the application of preferences in the procurement of specialized election technology.
153. The Board has examined the relevant provisions of the Tender Document. ITT 36.2 provides that: "A margin of preference shall not be allowed unless it is specified so in the TDS." The corresponding entry in the Tender Data Sheet expressly states: "Margin of Preference shall NOT apply." On the other hand, Item 6.1 of Section III provides that the Commission will grant a margin of preference of fifteen per cent (15%) to foreign tenderers where the percentage of shareholding by Kenyan citizens is less than fifty-one per cent (51%). The latter provision, read in isolation, appears inconsistent with the express entry in the Tender Data Sheet.

154. The Board finds that the apparent inconsistency must be resolved by reading the tender provisions together. ITT 36.2 expressly makes the application of a margin of preference conditional upon its specification in the Tender Data Sheet, which, in this case, states that no margin shall apply. Accordingly, Item 6 of Section III cannot be read as independently introducing a margin of preference contrary to the specific entry in the Tender Data Sheet. The clarification issued on 25th September 2026 confirmed that no margin of preference would apply. Although the clarification was issued seven days before the submission deadline, the Applicant has not demonstrated that it introduced a new evaluation criterion or that the time remaining materially impaired its ability to prepare and submit a tender. The Board nevertheless observes that the apparent inconsistency could have been avoided through clearer drafting of the Tender Document.

155. The Board now turns to whether the exclusion of a margin of preference was contrary to the Act. Section 89(f) of the Act provides:

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

156. Section 155 of the Act, which governs preferences and reservations, provides, in relevant part:

"(1) 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.

(2) Subject to availability and realisation of the applicable international or local standards, only such manufactured articles, materials or supplies wholly mined and produced in Kenya shall be subject to preferential procurement.

(3) 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.

(4) The threshold for the provision under subsection (3) (b) shall be above fifty-one percent of Kenyan shareholders.

(5) Where a procuring entity seeks to procure items not wholly or partially manufactured in Kenya—

(a) the accounting officer shall cause a report to be prepared detailing evidence of inability to procure manufactured articles, materials and supplies wholly mined or produced in Kenya; and

(b) the procuring entity shall require successful bidders to cause technological transfer or create employment opportunities as shall be prescribed in the Regulations.”

157. Section 157(8)(b) of the Act further provides that, in applying preferences and reservations under that section:

“a prescribed margin of preference shall be given—

(i) in the evaluation of tenders to candidates offering goods manufactured, assembled, mined, extracted or grown in Kenya; or

(ii) works, goods and services where a preference may be applied depending on the percentage of shareholding of locals on a graduating scale as prescribed.”

158. The above provisions establish a statutory framework for preferences and reservations in public procurement. In particular, Section 155(5) of the Act addresses procurements involving items that are not wholly or partially

manufactured in Kenya and requires the accounting officer to prepare a report detailing the inability to procure goods wholly mined or produced in Kenya, together with the prescribed requirements relating to technology transfer or employment opportunities. Section 157(8)(b) of the Act, on the other hand, addresses a prescribed margin of preference in the evaluation of tenders. The Board therefore distinguishes the question whether a margin of preference ought to apply from the separate question whether the procurement complies with other applicable statutory obligations concerning local participation.

159. The Board has also considered the decision in ***PPARB Application No. 170 of 2026***, which concerned the same underlying procurement of specialised election technology. In that decision, the Board stated:

"We therefore find that ITT 36.2, which provides that 'Margin of Preference shall not apply', does not, in the circumstances of this procurement, contravene Sections 89(f), 155 or 157 of the Act. The Applicant has therefore not established that the absence of a margin of preference amounted to unlawful discrimination against local or citizen contractors."

160. The earlier decision also distinguished the requirement for local content under Section 157(9) of the Act from a margin of preference under Section 157(8)(b) of the Act. 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."

161. The Board observes that the 40% local-content requirement and a margin of preference serve distinct functions. The former prescribes a preliminary requirement for foreign tenderers participating in international tenders, while the latter concerns an advantage applied during the evaluation of tenders. Compliance with the local-content requirement does not, without more, establish an entitlement to a margin of preference.
162. The Board has considered the Applicant's challenge independently, having regard to the provisions of the Act, the terms of the present Tender Document and the earlier determination concerning the same underlying procurement. The Applicant has not demonstrated that the material circumstances considered in the earlier decision have changed in a manner that would warrant a different conclusion, or otherwise established that the exclusion of a margin of preference in the present tender contravenes the statutory framework. Further, the Applicant has not demonstrated that the clarification issued on 25th September 2026 introduced a new evaluation criterion or occasioned material prejudice to its participation in the procurement.

163. Accordingly, the Board finds that the Applicant has not established a violation of Sections 89(f), 155 or 157 of the Act, or of the principles of fair, equitable, transparent, competitive and cost-effective procurement under Article 227(1) of the Constitution. This ground therefore fails and is dismissed.

What orders should the Board grant in the circumstances?

164. Having considered the parties' pleadings, affidavits, submissions and the applicable law, the Board has determined that the Applicant's Further Affidavit did not introduce new grounds of review beyond those pleaded in the Request for Review. The Board has further considered the Applicant's substantive challenges to the Tender Document, read together with Addendum No. 1 dated 18th September 2026 and the Clarifications dated 25th September 2026.

165. In determining the substantive grounds, the Board has examined the requirements relating to the tender submission deadline, experience and qualification criteria, the prohibition of joint ventures, reliance on subcontractors, local content and representation, financial qualification thresholds, sample submission, performance security and payment arrangements, and the application of a margin of preference. For the reasons set out in the preceding analysis, the Board has not found

sufficient grounds to warrant the reliefs sought by the Applicant. Accordingly, the Request for Review fails on its merits.

166. 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 that power is discretionary and must be undertaken judicially, having regard to the circumstances of the 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 recognizing that the Board's discretion in awarding costs must be exercised judicially and not capriciously or whimsically.
167. 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 emphasizing 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.
168. 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 Constitution or the Act warranting the intervention

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

169. The Board has also considered the nature and public importance of the subject procurement. Tender No. IEBC/OIT/001A/2026-2027 concerns the Supply, Delivery, Installation, Testing, Commissioning, Support and Maintenance of the Integrated Elections Management System (IEMS), Hardware Equipment and Accessories. The procurement is directly connected to the preparation for the forthcoming General Elections and must therefore be concluded lawfully and without avoidable delay. While the public importance of the procurement does not diminish a tenderer's statutory right to seek administrative review, it underscores the need for the procurement process to proceed to its lawful conclusion once the challenges raised have been determined.
170. 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.
171. Consequently, the instant Request for Review dated 29th September 2026 and filed on 30th September 2026, relating to Tender No. IEBC/OIT/001A/2026 - 2027 for the Supply, Delivery, Installation, Testing, Commissioning, Support and Maintenance of the Integrated Elections

Management System (IEMS), Hardware Equipment and Accessories, is hereby disallowed.

FINAL ORDERS

172. 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 29th September 2026 and filed on 30th September 2026 be and is hereby dismissed.

B. The Accounting Officer of the Independent Electoral and Boundaries Commission be and is hereby directed to proceed with the subject tender proceedings relating to Tender No. IEBC/OIT/001A/2026 - 2027 for the Supply, Delivery, Installation, Testing, Commissioning, Support and Maintenance of the Integrated Elections Management System (IEMS), Hardware Equipment and Accessories, to their lawful and logical conclusion.

C. The Applicant shall pay to the Respondents costs of the proceedings in the sum of Kenya Shillings Two Million (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