



EXECUTIVE SUMMARY

OF THE

REPORT OF THE

INVESTIGATION ON THE

PROCUREMENT OF THE VENDOR

FOR THE

NATIONAL POPULATION DATABANK

&

IDENTIFICATION SOLUTION

INSPECTORATE OF GOVERNMENT
KAMPALA
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REPORT OF INVESTIGATIONS ON THE PROCUREMENT OF THE VENDOR FOR THE NATIONAL POPULATION DATABANK & IDENTIFICATION SOLUTION OR SYSTEM

EXECUTIVE SUMMARY

1.0 INTRODUCTION

1.1 IG received 3 complaints on the procurement of the Vendor for the National Population Databank & Identification Solution (NPDB & IS) Project.

1.2 The 1st complaint was received from Supercom, who had submitted a Proposal for the NPDB & IS Project. Supercom stated, amongst other things, that: -

- (i) The bid price of USD 51 Million offered by Supercom was the best compared to that of USD 94 Million and USD 145 Million offered by Face Technologies and Contec Global, and
- (ii) The Evaluation Committee was seeking to unfairly award the tender for the Project to Face Technologies by increasing the bid price of USD 51 Million offered by Supercom to USD 139 Million.

This was done by invoking a provision, which stated that if a bidder omitted a certain element in its Proposal, the figure for the omitted element would be taken from the highest price of other bidders and added to the price offered by the bidder.

2 omissions were found in Supercom's Proposal and when the highest bid price for the omissions were added to the Proposal, its price increased to USD 139 Million.

Supercom therefore requested IGG to stop the procurement process of the Vendor for the NPDB & IS Project until the unfairness in the evaluation process was reviewed to save the reputation of Government (GoU) from being tarnished and the taxpayers from loss.

1.3 The 2nd complaint was received from Mr. Charles Rwomushana of Office of the President, alleging corruption and influence peddling by Hon. Musumba who stated, amongst other things, that: -

- (i) Hon. Musumba had crudely and illegally suspended and or caused the illegal suspension of the award of the contract to establish the NPDB & IS Project;
- (ii) Hon. Musumba was fronting and illegally lobbying for Contec Global who had submitted the highest bid of USD 145 Million and he and his team had been promised to share USD 50 Million, the difference between the bid for the winner, Face Technologies and that for Contec Global, and
- (iii) Hon. Musumba organized an appointment with the President on 23rd December 2005 to meet a delegation from Contec Global.

Mr. Rwomushana recommended, *inter alia*, that the matter be investigated with a view of prosecuting Hon. Musumba for corruption, influence peddling, and abuse of office.

1.4 The 3rd complaint was received from Contec Global who alleged biasness in the selection process and objected to award of the contract to Face Technologies on the basis of, amongst other things: -

- (i) Dr. Mulira, who had been a consultant on a project for NSSF involving Face Technologies, chaired the Evaluation Committee. This raised the issue of his partiality, and
- (ii) The Evaluation Committee did not award points for any site visits in respect of which the Committee had visited the site in Nigeria operated by Contec Global and which the Evaluation Committee evaluated as the best.

Contac Global petitioned IGG to stop the process of awarding the contract and cause all Proposals submitted to be re-evaluated by an independent Evaluation Committee.

2.0 LEGAL BASIS OF INVESTIGATION BY IG

- 2.1 IG commenced investigations into the complaints on the basis of the provisions of Articles 225 (1) (a), (b) (c) and (e), 226, 227 and 230 of the Constitution and Sections 8 (1) (a), (b) (c) and (e), 10 and 14 (5) and (6) of the IG Act.

These provisions spell out functions of IG and these include promoting strict adherence to the rule of law, eliminating and fostering the elimination of corruption and abuse of office and investigating decisions of a public officer or authority made in exercise of administrative functions.

3.0 OBJECTIVE & ISSUES FOR INVESTIGATION BY IG

- 3.1 The objective of the investigation by IG was to establish whether there was biasness, corruption, influence peddling, lack of transparency, manipulation, mismanagement and unfairness in the procurement of the Vendor for the NPDB & IS Project and thereafter IG would recommend the most appropriate course of action based on the findings and conclusions.

- 3.2 The main issues for investigation included: -

- (i) Whether the concerns of H. E. the President on uncoordinated procurement of ICT related equipment and services for by GoU Ministries and Organizations was addressed.
- (ii) How the NPDB & IS Project was incepted/initiated and whether GoU had put in place a policy for its implementation,
- (iii) What the objective of the NPDB & IS Project was and whether there was any other legal option of realizing this objective, and
- (iv) How the procurement of the Vendor of the NPDB & IS Project was initiated and whether such initiation was in accordance with the PP & DPA Act and Regulations;

This is an Executive Summary of the main findings of the investigations and recommendations of IG as are contained in the detailed Report of Investigations.

4.0 FINDINGS

- 4.1 The investigations established that the NPDB & IS Project was contrary to the provisions of the Constitution, 1995, the Uganda Citizenship & Immigration Control Act, Cap 66 and the Births & Deaths Registration Act, Cap 309.

The Project was also found to be contrary to Cabinet approval vide Minute CT 34 (CT 2004) of 11th February 2004 and was manipulated and misconceptualised. In addition, the objective of the envisaged databank can be realized through an alternative legal and established procedure.

This is demonstrated as follows: -

4.1.1 The Constitution, Uganda Citizenship & Immigration Control Act & Births & Deaths Registration Act

- 4.1.1.1 Article 16 (1) of the Constitution establishes the National Citizenship & Immigration Board (the Board) while Article 16 (3) provides that Parliament shall prescribe functions of the Board.

Article 18 provides that the State shall register every birth, marriage and death occurring in Uganda.

- 4.1.1.2 Section 7 (1) of Uganda Citizenship & Immigration Control Act provides that the functions of the Board include registering and issuing National Identity Cards to Ugandans, Issuing Uganda passports, granting and canceling immigration permits and registering and Issuing Identity Cards to aliens.

Section 7 (2) of the Act provides that the functions of the Board in respect of registering and issuing National Identity Cards, issuing Uganda passports and granting and canceling immigration permits may be decentralized to the district level.

4.1.1.3 Section 7 (1) and Section 16 (1) of the Births & Deaths Registration Act respectively provide that every particulars concerning of every birth and death occurring in Uganda shall be registered with the Register of Births and Deaths Registration District where the birth or death occurs.

4.1.1.4 The Request For Proposal (RFP) to which the bidders responded indicated that the requirements of the NPDB & IS Project included registration of citizens and non-citizens and issuance of identification documents.

The Proposals submitted by the bidders indicated that they would collect data, register persons and issue National Identity Cards Registration Certificates, Visa and Work Permits.

The Uganda Citizenship & Immigration Control Act does not provide for the Board to delegate its functions to 3rd parties and neither does it provide for 3rd parties to perform the statutory functions of the Board.

The successful Vendor who would establish the NPDB & IS would undertake registration and issuance of National Identity Cards to citizens of Uganda. The Vendor would perform the statutory functions of the Board. This would be contrary to the existing laws.

4.1.2 **Cabinet Approval vide Minute CT 34 (CT 2004)**

4.1.2.2 Cabinet had given approval on 11th February 2004 that GoU establishes a National Bio-Databank in MoIA for easy access by other GoU Institutions.

4.1.2.3 Cabinet had also approved that Collection, Storage and Management of Data should remain a responsibility of GoU and that card production should become a privatized service.

According to the RFP, the successful Vendor would collect, store and manage the Data and initially also undertake card production during the life of the BOT arrangement. GoU would subsequently take over

card production responsibility but only after the expiry of the BOT arrangement.

- 4.1.2.4 Cabinet approved that Ministry of Works, Housing & Communication (MoWH & C) (former) should coordinate procurement of Information & Communication Technology (ICT) related services in GoU to avoid duplication and wastage of scarce resources.

Investigations established that MoWH & C was not in any way involved in the procurement process.

It should be noted that this aspect of Cabinet approval has since been overtaken by events with the creation of the Ministry of Information & Communication Technology.

- 4.1.2.5 Cabinet, following the law, had correctly pronounced itself clearly, on how the Databank should be created and where it should be housed and therefore the NPDB & IS should have been implemented in line with Cabinet approval.

The NPDB & IS Project therefore infringed on provisions of Articles 16 (1) and 16 (3) of the Constitution, which have already been referred to and also Article 111 (2) which provides that the functions of Cabinet shall be to determine, formulate and implement policy of GoU.

4.1.3 **Manipulation & Mis-conceptualization of the NPDB & IS Project**

- 4.1.3.1 The National Bio-Databank as envisaged by GoU focused on citizens who were aged 18 years and above. This is why the Computerized Driving Permit, National Identity Card and Voters' Card Projects were particularly mentioned as Projects that should be implemented in line with the Cabinet approval that was given by Cabinet on 11th February 2004.

However, MoWH & C, as it then was, and EC respectively proceeded to implement the Computerized Driving Permit and Voters' Card Projects leaving as outstanding, only the National Identity Card Project from those initially mentioned.

The National Bio-Databank concept was expanded to encompass a computerized National Population Databank and Identification System/Solution from which several products, including the National Identity Card would be a by-product and a multiple of other services also derived.

The Implementers of the computerized National Population Databank and Identification System/Solution purported to justify the creation of the National Population Databank by arguing that issuance of a National Identity Card required the establishment of a Population Databank.

The Implementers sought to use the 2002 Census data of UBOS and Hon. Musumba asserted that they could legally manipulate that data to form the basis of creating the National Population Databank. There was no way that Census data could be used for this purpose due to restrictions put on its by Uganda Bureau of Standards Act, Cap 310 and which in the 4th Schedule provides for matters in which a Census can be Ordered and these do not include registration of citizens for issuance of National Identity Cards.

- 4.1.3.2 The word which was used of legally manipulating Census data at UBOS was used in bad faith.

According to the Oxford Advanced Learners' Dictionary, the word "manipulate" means "to control or influence, often in a dishonest way so that an objective is not realized" and it also means "to control or use in a skillful way". "Manipulator" means "a person who is skillful at influencing people or situations in order to get what they want".

The investigations showed that the Implementers of the NPDB & IS Project were manipulating the Project in an unfair way, detrimental to GoU, for their own ends. Calling the Project a "National Population Databank" was a misnomer because the objective of the National Bio-Databank as approved by Cabinet was to collect data (through registration) of Ugandans who were 18 years and above. The addition

of "Identification Solution" was a clear manifestation of manipulation because there is an elaborate procedure of registering every births and deaths which occur in Uganda under the Births & Deaths Registration Act, Cap 309 which specifically provides for the Attorney General to divide the Districts of Uganda for purposes of registration of births and deaths, amongst other things.

This office is of the view that issuance of a National Identity Card is not directly dependant on the establishment of a National Population Databank, let alone a highly computerized one for that matter, and that it is the registration of citizens of 18 years and above which will create the data from which National Identity Cards will be issued.

4.1.4 Existing Alternative Legal Option

4.1.4.1 The objective of establishing a National Population Databank was for the Databank to be used to verify the identity and citizenship of individuals for issuance of National Identity Cards, Passports and other purposes.

The Implementers claimed that Uganda did not have an accurate method of verifying the identity of individuals and this explained the case with which certain malpractices occurred.

4.1.4.2 The investigations established that the Uganda Citizenship & Immigration Control Act, specifically Sections 29 and 32 thereof, contained provisions through which the identity of individuals could be verified. Amazingly, it was established that Part IV of the Uganda Citizenship & Immigration Control Act that contained these Sections had not commenced operation.

Section 29 made it mandatory for every application for registration as a citizen and for a National Identity Card to be made in a prescribed form, Form D.

Form D, required the applicant to give particulars, which included Surname, Sex, Age, Residential Address (village, Sub-county, County

and District of permanent residence), Occupation, Height, Color of Eyes and Hair, Place and Date of Birth, Father's Names and Place of Birth, Blood Group, Driving License Number, Tax Identification Number, etc.

Form D also contained a Declaration to be completed and signed by the applicant and 3 passport size photographs of the applicant was to accompany the Form.

Section 32 of the Act made it mandatory for every application for registration as a citizen or for a National Identity Card to bear 3 passport size photographs and to be duly verified by a person prescribed by the regulations.

Section 32 (1) granted the Board the discretion to call upon any applicant to authenticate any of the facts contained in the application form or produce recommendatory letters from persons prescribed by the regulations.

- 4.1.4.3 Consequently, through the application of Sections 29 and 32 of Uganda Citizenship & Immigration Control Act, the identity of individuals could be verified.

It is therefore incorrect and misleading to conclude that there was no accurate method of verifying the identity of individuals in Uganda when there was an existing and established procedure of doing so in Sections 29 and 32 of the Act only that Part IV containing these Sections had not commenced operation and therefore their efficacy had not been determined.

GoU had spent resources to come up with the law. It is unfortunate that it was being declared "stillborn" even before it could be tested.

Had the provisions under Part IV of the Uganda Citizenship & Immigration Control Act been commenced or put in effect, they would have undoubtedly addressed malpractices that were being associated with the purported and imaginary absence of an accurate method of verifying the identity of individuals in Uganda.

4.2 As demonstrated, the NPDB & IS Project was contrary to the Constitution Article 16 (1), Uganda Citizenship & Immigration Control Act and Births & Deaths Registration Act. The Project was also contrary to Cabinet approval vide Minute CT 34 (CT 2004). In view of these violations, the NPDB & IS Project is therefore void.

The investigation also disclosed numerous instances where the provisions of the PP & DPA Act and Regulations were contravened in the procurement of the Vendor for the NPDB & IS. Therefore, even if one was to argue that the NPDB & IS Project was not void, which is certainly not the case, the contraventions of the PP & DPA Act and Regulations would make the Project illegal and therefore void. The main instances were as follows: -

4.2.1 **The procurement was not planned**

4.2.1.1 The procurement was not planned as required by the provisions of Sections 30 and 31 of the PP & DPA Act and Regulation 98 of the PP & DPA Regulations, which are mandatory.

This is best demonstrated during and after negotiations, where on one hand, the Negotiation Team Chaired by Ms. Kasimbazi, recommended to UBOS Contracts Committee to award the contract to Face Technologies when 2 critical matters, on finance and revenue, were still unresolved.

The Negotiation Team did not disclose to Contracts Committee that much as the Proposal by Face Technologies had been evaluated as best at USD 92, 049,472.00, it had "floated" a Recovery Schedule proposing to recover USD 151 Million during the life of the BOT Project, 5 years, although this was not discussed at the negotiations.

On the other hand, Hon. Musumba in the letter of 30th January 2006 addressed to the Prime Minister indicated that the NPDB & IS Project could not proceed to the point of award until policy issues had been cleared by Cabinet. These included: -

- Whether GoU could widen the product range or increase charges if cost of Visas, Passports and Work Permits were inadequate to cover the investment,
- Whether public institutions would be compelled to contribute for the unit cost of the Identity Card, and
- Whether there would be any law to compel people to register en-mass, and

The issues of finance and revenue together with those on policy as mentioned by Hon. Musumba, as well as others mentioned in the Report, should have been amongst the first to be resolved and cleared before the procurement process commenced.

This was clear lack of planning contrary to the provisions of Section 58 of the PP & DPA Act.

It should be noted that had Part IV of the Uganda Citizenship & Immigration Control Act commenced operation, the belated concerns of Hon. Musumba would have been addressed.

4.2.2 Failing to involve Procurement & Disposal Units and User Department

- 4.2.2.1** The procurement did not involve Procurement & Disposal Units and User Departments of respective Procuring & Disposing Entities who had interests in the NPDB & IS Project (Stakeholders) as required by provisions of Sections 31, 32, 34 and 35 of the PP & DPA Act and Regulation 98 of PP & DPA Regulations, which are mandatory.

The initial procurement process instead involved the Implementation Committee, established by Hon. Musumba, the Steering Committee, chaired by Dr. Kagoda, PS – MoIA and the Bid Preparation & Evaluation Committee, which are unknown to the PP & DPA Act and Regulations. The Implementation Committee, Steering Committee and Bid Preparation & Evaluation Committee therefore usurped the statutory

functions of the structures put in place by the PP & DPA Act and Regulations

Consequently, the Implementation Committee, Steering Committees and Bid Preparation & Evaluation Committee were illegal structures in the eyes of the PP & DPA Act and Regulations and the acts they undertook and decisions they made were null and void.

4.2.3 Falling to involve Contracts Committee at Initial Stage of Procurement

4.2.3.1 There was no Contracts Committee involved in the initial stages of the procurement process.

The Contracts Committee would have, among other things, authorized the choice of procurement procedure and the pre-qualification document before it was issued to prospective bidders as required by the provisions of Sections 28 and 29 of the PP & DPA Act and Regulation 94 of PP & DPA Regulations, which are mandatory.

UBOS Contracts Committee was eventually assigned the task of finalizing the procurement process of the Vendor for the NPDB & IS Project following the advise of PP & DPA Authority through its letter of 20th July 2005 addressed to PS – MoIA.

UBOS Contracts Committee did not therefore authorize that the procurement of the Vendor for the NPDB & IS should commence through pre-qualification, neither did the Contracts Committee authorize the Call for Expression of Interest before these were issued to the prospective bidders. Consequently, the process through which the 8 prospective bidders were pre-qualified was illegal and therefore null and void.

4.2.4 Irregularly Constituted Pre-Qualification Evaluation Committee

4.2.4.1 The Evaluation Committee that evaluated the pre-qualification bids was part of the Bid Preparation & Evaluation Committee. The Bid

Preparation & Evaluation Committee as already indicated, was unknown to PP & DPA Act and Regulations.

However, equally significant is the fact that members of this Evaluation Committee were not approved by UBOS Contracts Committee or any other Contracts Committee, as required by the provisions of Sections 37 (1) and (2) of PP & DPA Act and Regulations 169 (1) and (2) of PP & DPA Regulations, which are mandatory.

This Evaluation Committee did not also report to any Procurement & Disposal Unit as required by the provisions of Regulation 169 (1) of PP & DPA Regulations, which is also mandatory.

Consequently and needless to state, the acts and decision of the Evaluation Committee of the Bid Preparation & Evaluation Committee which included the recommendation pre-qualifying the 8 bidders were illegal and therefore also null and void.

4.2.5 Flawed Evaluation of Pre-Qualification Bids

- 4.2.5.1 The evaluation of the pre-qualification bids, needless to state, but for the sake of completeness, was seriously flawed and was not conducted in accordance with the provisions of Sections 71 (2) and (3) of the PP & DPA Act and Regulation 124 (3) of PP & DPA Regulations, which are mandatory. The evaluation was also not conducted in accordance with the provisions of Sub-Clauses 25.1 and 27.1 of the Application Data Sheet in the Pre-Qualification Document, which are also mandatory.

The flaws manifested themselves whereby Contec Global, who did not satisfy the Qualification Criteria in so far as Financial Performance, Average Annual IT Supply & Installation Turnover, and General IT Supply & Installation Experience was concerned and should have been rejected, was nevertheless pre-qualified.

The Investigations revealed that Hon. Musumba exerted undue influence on the Evaluation Committee to pre-qualify firms which had not meet the Pre-Qualification Criteria.

The evaluation was therefore unfair and not transparent since a firm, which ought to have been disqualified, was permitted to advance to the next stage of the procurement process. This tended to undermine the principle of competition.

4.2.6 Ineligible Chairperson/Member of Contracts Committee

- 4.2.6.1 Mr. F. Mashate, (former) Chairperson of UBOS Contracts Committee was also Director for Finance and Administration at UBOS. His responsibilities included managing finances of UBOS and involved certifying availability of funds prior to commencement of procurement activities and committing funds prior to contract placement.

His appointment to the Contracts Committee contravened the Procurement & Disposal Guidelines on appointment of members of Contracts Committee, Guideline Reference 5/2004, issued on 27th May 2005.

These Guidelines prohibit any member of staff of a Procuring & Disposing Entity to whom an Accounting Officer has delegated functions such as those of Mr. Mashate, from being nominated to the Contracts Committee.

Mr. Mashate was therefore ineligible to be appointed to UBOS Contracts. Consequently, all proceedings which Mr. Mashate presided upon as Chairperson of UBOS Contracts Committee, including those related to the procurement of the NPDB & IS Project, were nullity and of no consequence.

4.2.7 Irregularly Constituted Contracts Committee

- 4.2.7.1 The Evaluation Committee was composed of officials who included "Ex-officio" members.

The PP & DPA Act and Regulations have no provision for "Ex-officio" members of Evaluation Committee. These purported members of the Committee were not nominated by UBOS Procurement & Disposal Unit

and approved by UBOS Contracts Committee as required by provisions of Section 37 of the PP & DPA Act and Regulation 169 (2) of the PP & DPA Regulations, which are mandatory.

The presence and participation of "*Ex-officio*" members in the evaluation exercise was contrary to the provisions of Section 37 of the Act and Regulation 169 (2) of the Regulations. Consequently, the Evaluation Report for the NPDB & IS was an outcome of a process that was corrupted by the presence, and participation of persons who were not recognised in the eyes of the law.

4.2.8 Irregular Appointment of Chairperson of Evaluation Committee

- 4.2.8.1 Dr. Mulira, the Chairperson of Evaluation Committee, was appointed by UBOS Contracts Committee. This contravened provisions of Regulation 170 (2) of PP & DPA Regulations, which require that members of the Evaluation Committee select the Chairperson of the Committee. These provisions are mandatory.

Consequently, the members of the Evaluation Committee were denied the opportunity of selecting a person of their choice to preside upon the deliberations of the Committee. This undermined the evaluation process.

This further illustrates how manipulative the Implementers of the NPDB & IS Project were in satisfying their personal interests as apposed to national interests.

4.2.9 Partiality of Chairperson of Evaluation Committee

- 4.2.9.1 There was partiality where Dr. Mulira, as Chairperson of the Evaluation Committee, presided over an evaluation exercise in which Face Technologies was amongst the firms being evaluated. In addition, he also participated in meetings of the Steering Committee, which oversaw the preparation of the Call for Expressions of Interest and the RFP to which the short-listed bidders responded.

Dr. Mulira was previously an External Independent IT Consultant in an IMIS project, which Arivia.kom and its subsidiaries, Lava Systems Ltd and Face Technologies were executing at NSSF.

The prior interaction of Dr. Mulira with Arivia.kom, Lava Systems Ltd and Face Technologies in a project, in which he rated their performance as successful, must have influenced him to favorably evaluate the Proposal of Face Technologies to implement the NPDB & IS. This must prejudiced the Proposals submitted by other bidders considering that his appointment as Chairperson of the Committee was not done in accordance with the law.

Consequently, the partiality of Dr. Mulira undermined the evaluation upon which he presided as Chairperson taking into account that Face Technologies was the most responsive bidder. This was unfair to other bidders and detrimental to the NPDB & IS Project as a whole.

4.2.10 Ambiguous & Unapproved Evaluation Methodology

- 4.2.10.1 The RFP did not specify which evaluation methodology would be used to evaluate the Proposals and neither was there evidence shown that PP & DPA Authority had consented to the use of another evaluation methodology other than those specified by Regulations 197 (1) and 197 (2) of the PP & DPA Regulations.

The NPDB & IS Project would be executed on "Build Operate and Transfer" (BOT) basis and therefore was included in the definition of "works" within the meaning of Section 3 of the PP & DPA Act. Consequently, the Proposals ought to have been evaluated using the Technical Compliance Selection methodology.

The Evaluation Committee instead applied aspects of Technical Compliance Selection and that of Quality and Cost Based Selection to evaluate the Proposals. The resultant evaluation was, therefore, muddled up. Consequently, the evaluation could not be said to have been transparent and fair to either come up with a proper outcome or that there would be value for money.

It was evident that the nature of the Project did not warrant it to be a BOT, at least for the purposes of issuance of National Identity Cards, as it was common knowledge, as already stated, that collection, storage and management of data was a responsibility of GoU, in line with the applicable law and Cabinet approval.

The inclusion of "Identification Solution" was a manipulation since there was no way the definition of "works", within the meaning of Section 3 of the PP & DPA Act, could apply to collection, storage and management of data.

4.2.11 Irregular Proceedings of Evaluation Committee Meetings & Lack of Necessary/Required Skills

- 4.2.11.1 The Evaluation Committee held evaluation meetings without all members of the Evaluation Committee being present contrary to the provisions of Regulations 171 (1) of the PP & DPA Regulations, which are mandatory.

The evaluations were also conducted without persons who would have provided necessary legal and financial skills and expertise to the evaluation process contrary to provisions of Regulations 169 (5) of the PP & DPA Regulations, which are also mandatory.

4.2.12 Disregard of Provisions of PP & DPA Act & Regulations & RFP in Evaluation

- 4.2.12.1 The evaluation of the Proposals was also flawed and not conducted in accordance with the provisions of Sections 71 (2), 71 (3) and 72, of the PP & DPA Act and Regulations 172 (1), 178 (1), 178 (2) and 179 of the PP & DPA Regulations which are mandatory.

The evaluation was also not conducted in accordance with Clauses 26.4 and 26.5 of the Instructions to Vendors of the RFP.

The flaws manifested themselves whereby the Evaluation Committee proceeded to evaluate and rank the Proposal of Supercorn although it

introduced material deviations, exceptions, objections, conditionalities or reservations and therefore was non-responsive and should have been rejected.

Similarly, the Evaluations Committee proceeded to evaluate and rank the Proposal of Contec Global although Contec Global did not demonstrate that it had the capacity to finance and execute the NPDB & IS Project.

Contec Global also attached financial statements belonging to "*Continental Transfert Technique Ltd*" a separate and distinct legal entity that had not received the RFP. "*Continental Transfert Technique Ltd*" therefore had no role in the procurement. Contec Global was therefore also non-responsive and should have been rejected.

Consequently, the Evaluation Committee was wrong in not strictly applying the provisions of PP & DPA Act, PP & DPA Regulations and RFP in respect of the Proposals submitted by Supercom and Contec Global and this constituted unfairness to Face Technologies and tended to promote unfair competition.

It should be noted that all projects mentioned by Contec Global, Face Technologies and Supercom, as evidence of their proven capability, were of a low contract value compared to the value or bid prices which they offered in their respective Proposals.

In spite of this, the Evaluation Committee did not verify details of these projects mentioned by Contec Global, Face Technologies and Supercom nor did it independently seek references on the bidders from the users named in the projects.

The Evaluation Committee did not therefore evaluate the Contec Global, Face Technologies and Supercom comprehensively to ensure that the requirements of the provisions of Clause 32.1 of Instructions to Vendors were fulfilled.

4.2.13 Site Verification undertaken contrary to provisions on Post-Qualification in RFP & PP & DPA Regulations

- 4.2.13.1 The Evaluation Committee carried out site verification visits from 23rd October 2005 to 2nd November 2005 on all 3 bidders. This was contrary to the provisions of Regulation 218 (5) of the PP & DPA Regulations, which restricted post-qualification on only the best-evaluated bidder where such was considered necessary. The site verification visits were also contrary to the provisions of Clause 31.2 of the Instructions to Vendors of the RFP, which similarly restricted post-qualification on only the best-evaluated bidder.

Consequently, the scoring and subsequent ranking of the bidders after site verification was illegal and irregular and only served to create unnecessary confusion amongst the bidders when the highest ranked bidder in the technical and financial evaluation was ranked last in the site verification, and vice versa. This further undermined and discredited the process.

4.2.14 Irregular Appointment of Negotiation Committee

- 4.2.14.1 The Negotiation Team chaired by Ms. Kasimbazi, on its initial and irregular appointment by Hon. Musumba on 19th December 2005, immediately commenced arranging for the negotiations before the Team was properly constituted in accordance with the provisions of Regulations 221 (1) of the PP & DPA Regulations. Regulations 221 (1) requires that the Negotiation Team be recommended by the Procurement & Disposal Unit and be subsequently approved by the Contracts Committee.

Although UBOS Contracts Committee eventually approved the members of the Negotiation Team, these were the very persons who Hon. Musumba had appointed. This therefore meant that the Contracts Committee merely "rubber-stamped" the decision of Hon. Musumba. Consequently, UBOS Contracts Committee contravened Section 38 of the PP & DPA Act, which provides that a Contract Committee shall act independently in relation to its functions and powers.

4.2.15 **Irregular Composition of Negotiation Team**

- 4.2.15.1 The Negotiation Team was also composed of officials who included "Ex-officio" members who were co-opted by the Negotiation Team.

The PP & DPA Regulations has no provision for "Ex-officio" members nor does it permit the Negotiation to co-opt 3rd parties. Regulation 221 (1) of the Regulations required that the Negotiation Team be recommended by the Procurement & Disposal Unit and approved by the Contracts Committee. These purported members of the Committee were not recommended by UBOS Procurement & Disposal Unit and approved by UBOS Contracts Committee as required by provisions of Regulation 221 (1) of the Regulations, which is mandatory.

The presence and participation of "Ex-officio" members in the negotiations was contrary to the provisions of Regulation 221 (1) of the Regulations. Consequently, the negotiations with Face Technologies and the resulting Negotiation Report were corrupted by the presence, and participation of persons who were not recognised in the eyes of the PP & DPA Regulations.

4.2.16 **Flawed Negotiation Process**

- 4.2.16.1 The Negotiation Team, which was representing GoU, and Face Technologies, did not resolve all issues on finance and revenue during negotiations and these, undoubtedly, would determine whether the parties sustain interest in the NPBD & IS Project.

The Negotiation Team chaired by Ms. Kasimbazi erred and acted in haste to recommend to UBOS Contracts Committee that Face Technologies should be awarded the contract, as the negotiations were not yet complete.

The Negotiation Team in making the recommendation to UBOS Contracts Committee informed the Committee Face Technologies had fulfilled most of the requirements. This created the false impression that all the major issues had been thrashed out and all that therefore remained were only minor issues.

Regulation 220 (8) of the PP & DPA Regulations permitted the Negotiation Team to recommend to UBOS Contracts Committee that further negotiations were necessary.

The Negotiation Team, as already stated, did not disclose to UBOS Contracts Committee that Face Technologies, who's Proposal had been evaluated as best at USD 92, 049,472.00, had also "floated" a Recovery Schedule proposing to recover USD 151 Million during the life of the BOT Project, 5 years, although this was not discussed at the negotiations.

The Negotiation Team should have recommended that further negotiations were necessary considering that the unresolved issues, on finance and revenue, were critical.

Consequently, UBOS Contracts Committee, who was also informed by the Negotiation Team that Face Technologies had fulfilled most of the requirements, similarly erred and acted in haste to publish the Notification of Contract Award awarding the Contract for the NPDB & IS to Face Technologies at the total Contract Price of USD 92, 049,472.00.

4.3 The investigation also disclosed gross interference, manipulation and influence peddling in the procurement process by Hon. Isaac Musumba, former Minister of State for Finance (Planning). This is demonstrated as follows: -

- (i) Hon. Musumba irregularly involved himself in the NPDB & IS Project as if he was part of a Procuring & Disposal Entity.

Section 24 of the PP & DPA Act states that a Procuring & Disposal Entity shall be composed of an Accounting Officer, Contracts Committee, Procurement & Disposal Unit, User Department and an Evaluation Committee.

Section 26 of the PP & DPA Act also states that the Accounting Officer for a Procuring & Disposal Entity shall have overall

responsibility for executing the procurement process in the Procuring & Disposal Entity.

Regulation 41 of PP & DPA Regulations similarly states that the Accounting Officer shall have overall responsibility for executing the procurement, disposal, and contract management processes in the Procuring & Disposal Entity.

Sections 24 and 26 of PP & DPA Act and Regulation 41 of PP & DPA Regulations do not include a Minister in the composition of a Procuring & Disposal Entity. They also do not assign any role to a Minister to play during procurement.

- (ii) Hon. Musumba communicated with the Evaluation Committee of the Bid Preparation & Evaluation Committee, which was evaluating the pre-qualification bids as a result of which a prospective bidder, Contec Global was included as amongst firms, which had been pre-qualified despite the fact that it had in fact failed the pre-qualification.

He also communicated with the Evaluation Committee during the evaluation exercise through its Chairperson, Dr. Mulira and emphasized to the Committee to evaluate the Proposals with a view to ranking the bidders and not to eliminate them. He also indicated that identification of the successful firm was still protracted since negotiations as well as site visits would be undertaken with all the bidders to determine who was best suited.

The Investigations revealed that Hon. Musumba exerted undue influence on the Evaluation Committee to pass firms which had not meet the set criteria, either during pre-qualification or detailed evaluation stage;

- (iii) Hon. Musumba initially contravened the provisions of Regulation 220 (2), 221 (1), 222 (1) and 222 (2) of the PP & DPA Regulations by appointing the Negotiation Team and inviting the 3 bidders for negotiations.

These Regulations require that negotiations be held with the best-evaluated bidder. They also require that the Negotiation Team be recommended by the Procurement & Disposal Unit and approved by the Contracts Committee. The Regulations also require the members of the Negotiation Team to select the Chairperson and who would be responsible for managing communication between the Team and the bidder.

Although some of the acts of Hon. Musumba were rectified, he had already cause harm to the process by his interference and manipulation;

- (iv) Hon. Musumba also made last ditch attempts through PS/ST and Hon. Minister – MoJ & CA to block the award of the Contract to Face Technologies by relying on a Report of the audit on the IMIS at NSSF. He went as far as informing PS/ST and Hon. Minister – MoJ & CA that as the Minister who was supervising the Project, he was not in a position to present Face Technologies to Cabinet, Parliament or indeed Top Management of MoFP & ED as a fit and proper company for the NPDB & IS
- (v) Hon. Musumba lied to this Office that he wrote to all the 3 bidders at the same time inviting them for negotiation with GoU whereas the evidence on record clearly established that he initially wrote only to Contec Global, and
- (vi) Hon. Musumba also lied to this Office that he did not fund the site verification visits whereas the evidence on record, once more clearly established that Hon. Musumba infact personally paid USD 15,400.00 to UTB 2004 Ltd through Mr. Saul Kaye, the Executive Director of National Planning Authority.

The payment of USD 15,400.00 was for air tickets issued to the 9 members of the Evaluation Committee who carried out the site visits. There was an earlier cash payment of USD 10,000.00 made to UTB 2004 Ltd for the same purpose purportedly made by Mr.

Kaye. However, Mr. Kaye vehemently denied having made any such payment to UTB 2004 Ltd although the receipt for the same bore his name and place of work and UTB 2004 Ltd proved evasive and elusive on the identity of the person who made that cash payment.

- 4.4 The investigation did not conclusively determine the allegation of bribery against Hon. Musumba since the evidence could not be corroborated. The source which may have corroborated the allegation could not be relied upon as the source appeared to be lobbying for Face Technologies.

5.0 RECOMMENDATIONS

- 5.1 On the basis of the foregoing findings this Office recommends as follows: -

5.1.1 **Cancellation of Notification of Contract Award for the NPDB & IS Project in favor of Face Technologies**

- 5.1.1.1 The Notification of Contract Award published by UBOS Contracts Committee on 23rd January 2006 awarding the Contract for NPDB & IS to Face Technologies at a Contract Price of USD 92, 049,472.00 should be withdrawn and rescinded immediately.

It should be noted that UBOS published the Notification of Contract Award prematurely since 2 critical matters, on finance and recovery of revenue, were still unresolved. In addition, Face Technologies who's Proposal had been evaluated as best at USD 92, 049,472.00, had "floated" a Recovery Schedule proposing to recover USD 151 Million during the life of the Project.

The 2 critical matters, on finance and recovery of revenue was not discussed during the negotiations neither was the proposal to recover USD 151 Million disclosed to UBOS Contracts Committee. One wonders why it was not disclosed considering that the difference between USD

92, 049,472.00 and USD 151 Million was very substantial to the tune of USD 58,950,528.00.

The procurement of the Vendor for the NPDB & IS Project should also remain suspended indefinitely pending GoU through Cabinet resolving the issues of law and policy highlighted in this Report.

It should be noted that under the provisions of Section 76 (1) of PP & DPA Act and Regulation 224 (2) of PP & DPA Regulations, a decision to award a contract or a notice of best-evaluated bidder does not amount to a contract. Consequently, the said Notification of Contract Award does not amount to a contract and is therefore not binding on MoFP & ED or GoU for that matter.

5.1.2 Commencing & Operationalizing Part IV of Uganda Citizenship & Immigration Control Act

- 5.1.2.1 The Minister of Internal Affairs should immediately initiate the process, which will culminate in Part IV of the Uganda Citizenship & Immigration Control Act being put in effect.

The Ministry should also begin to budget and plan for the modalities to facilitate the successful and effective implementation of the Uganda Citizenship & Immigration Control Act including the registration of citizens and issuance of National Identity Cards.

Investigations established that Ministry of Internal Affairs had previously made unsuccessful attempts to seek budgetary support from GoU to facilitate the registration of citizens and issuance of National Identity Cards. For instance in the 2002/2003 Financial Year, the Ministry requested for UgShs 455 Million and in 2004/2005 it requested for UgShs 1.67 Billion. In both cases no funds were availed to the Ministry.

Comparing the budget proposed by the Ministry and the cost which would be incurred in the Project, it is obviously cheaper and cost effective for Part IV of the Uganda Citizenship & Immigration Control

Act to be put in effect to enable the registration of citizens and issuance of National Identity Cards.

This Office therefore recommends that Ministry of Internal Affairs should be facilitated to enable it undertake registration of citizens and Issuance of National Identity Cards in accordance with the existing law.

- 5.1.2.2 If GoU finds it necessary to proceed with the implementation of the NPDB & IS Project despite all the flaws that are highlighted in the Report, then GoU should pronounce itself on the Uganda Citizenship & Immigration Control Act. This is due to the fact that certain parts of the Act would, as of necessity, require to be repealed as there cannot be parallel systems of registering and issuing National Identity Cards to the citizens.

GoU would also need to resolve the other issues of law and policy highlighted in the Report.

5.1.3 **Administrative Action on Public Servants Involved in the NPDB & IS Project**

5.1.3.1 **Hon. I. M. Musumba**

Hon. Musumba irregularly involved himself in the NPDB & IS Project as if he was part of a Procuring & Disposal Entity of which he was not. He also attended the Cabinet meeting, which granted approval under Minute CT 34 (CT 2004). Hon. Musumba therefore oversaw a process that was being implemented contrary to the law and Cabinet approval.

Hon. Musumba was particularly duty bound to defend the Cabinet decision in accordance with Article 117 of the Constitution which, inter alia, states that Ministers shall collectively be responsible for any decision made by Cabinet.

The Investigations revealed that Hon. Musumba exerted undue influence on the Evaluation Committee to pass firms which had not met

the set criteria, either during pre-qualification or detailed evaluation stage.

Hon. Musumba initially contravened the provisions of Regulation 220 (2), 221 (1), 222 (1) and 222 (2) of the PP & DPA Regulations by appointing the Negotiation Team and inviting the 3 bidders for negotiations.

Hon. Musumba, as already indicated, also made last ditch attempts through writing letters PS/ST and Hon. Minister – MoJ & CA to block the award of the Contract to Face Technologies by relying on a Report of the audit on the IMIS at NSSF which was inconclusive and unauthenticated. He went as far as informing them that as the Minister who was supervising the Project, he was not in a position to present Face Technologies to Cabinet, Parliament or indeed Top Management of MoFP & ED as a fit and proper company for the NPDB & IS.

Hon. Musumba, as already indicated, lied to this Office that he wrote to all the 3 bidders at the same time inviting them for negotiation with GoU whereas the evidence on record clearly established that he initially wrote only to Contec Global.

Hon. Musumba, as already indicated also lied to this Office that he did not fund the site verification visits whereas the evidence on record clearly established that Hon. Musumba in fact personally paid USD 15,400.00 to UTB 2004 Ltd for the air tickets through Mr. Kaye, the Executive Director of National Planning Authority.

There was an earlier cash payment of USD 10,000.00 made to UTB 2004 Ltd in December 2005 for the same purpose (site verification visits), purportedly, by Mr. Kaye. However, Mr. Kaye vehemently denied having made any such payment to UTB 2004 Ltd and UTB 2004 proved evasive and elusive on the identity of the person who made the payment.

By lying to this Office, Hon. Musumba committed perjury for which he is liable for prosecution.

From the foregoing, it is apparent that Hon. Musumba irregularly involved himself in the NPDB & IS Project and lied about writing to the bidders, Contec Global, Face Technologies and Supercom, and about funding the site verification visits because he was acting in bad faith and had personal interest in the outcome of the procurement process. From the evidence gathered, Hon. Musumba was fronting and or lobbying for Contec Global

It can also be reasonably inferred and concluded that Hon. Musumba was fronting for Contec Global to be awarded the Contract for NPDB & IS Project.

These acts by Hon. Musumba amounted to misconduct and abuse of office on his part. Hon. Musumba also infringed the principle of collective responsibility on decisions of Cabinet, as enshrined in Article 117 of the Constitution. This was a very serious infringement on the part of Hon. Musumba.

This office therefore recommends to H. E. the President to exercise his discretion and take such action against Hon. Musumba as he deems appropriate in the circumstances.

5.1.3.2 Hon. Dr. H. M. Mulira

Dr. Mulira, as he then was, contributed to the NPDB & IS Project being manipulated and misconceptualised when, on 31st January 2005, he wrote a Loose Minute to D/ST on the matter. He informed D/ST that the Constitution made it mandatory to register every birth, marriage and death that occurs in Uganda and that this implied the requirement of a National Databank which, amongst other uses, would also be used for the National Identity Cards by providing information on all citizens of Uganda.

This was diversionary as what was required was to coordinate and harmonize the procurement of ICT related services and equipment with GoU Ministries and Departments to avoid duplication and wastage of scarce resources.

Dr. Mulira, as Chairperson of the Evaluation Committee also failed to execute his statutory duties as outlined in Regulation 170 of the PP & DPA Regulations. He failed, inter alia, to: -

- (i) Ensure all members of the Evaluation Committee have a common understanding of the evaluation methodology and criteria to be used,
- (ii) Ensure that the evaluation was conducted in accordance with all legal requirements and the provisions of the solicitation documents, and
- (iii) Ensure that all members of the Evaluation Committee were aware of their responsibilities.

There was partiality on the part of Dr. Mulira from the multiple roles he performed in various capacities in the Steering Committee, Evaluation Committee and Negotiation Committee. He would participate in a meeting in one capacity and thereafter preside upon another to decide on the same matter but in a different capacity.

The multiple roles compromised the independence of Dr. Mulira and he could not have been expected to remain objective. This further compromised the impartiality of Dr. Mulira and bordered on conflict of interest.

Dr. Mulira also failed to disclose his prior interaction with Face Technologies and to safeguard the integrity of the process he was engaged in, he ought to have disclosed this fact. Failure to do so made him violate the principle of Natural Justice that one cannot be a judge in his own cause.

This office therefore strongly advises Hon. Dr. Mulira to desist from putting himself in such situations and more importantly to adhere to the principle of Natural Justice stated above. He should also heed the provisions of Leadership Code Act in the performance of his duties as a Leader.

5.1.4 Dr. S. P. Kagoda

- 5.1.4.1** The implementation of the NPDB & IS Project contrary to Cabinet approval, Minute CT 34 (CT 2004), its being misconceptualised, failure to operationalise Part IV of the Uganda Citizenship & Immigration Control Act and the numerous illegalities and irregularities as highlighted in this Report, occurred under the watch of Dr. Kagoda, PS – MoIA.

Dr. Kagoda, as the Accounting Officer at MoIA, which is a Procuring & Disposing Entity, routinely dealt with matters touching on the operation of PP & DPA Act and Regulations, especially concerning the composition and functions of structures such as User Department, Procurement & Disposal Unit and Contracts Committee. He should therefore have been able to immediately realize that the Implementation Committee, Steering Committee and Bid Preparation & Evaluation Committee in relation to issues of procurement, were not structures in the eyes of the PP & DPA Act and PP & DPA Act Regulations.

Dr. Kagoda was therefore the first best-placed and knowledgeable person to sound alarm bells on the anomalies on the implementation of the NPDB & IS. There were several available avenues through which he would have done so for instance, seeking guidance from PP & DPA Authority or legal advice from Hon. Attorney General who, under Article 119 (3) of the Constitution, is the Principal Legal Advisor of GoU. He would also have reported to the Prime Minister by virtue of the fact that the Prime Minister had directed the matter be handled in accordance with the procurement laws. He would also have reported to IG. The fact that he failed to do so leads to a strong inference of laxity on his part.

- 5.1.4.2** GoU Standing Orders, Code of Conduct and Ethics for Public Service, stipulate that a Public Officer is personally responsible for his or her official actions

The Standing Orders also require that a Public Officer should display, amongst other virtues, dedication, and professionalism when discharging official duties. Dr. Kagoda failed to display dedication, and professionalism in his duties.

This Office strongly advises him to discharge his Official duties with dedication, and professionalism.

5.1.5 Mr. F. Mashate

- 5.1.5.1 Mr. Mashate was Chairperson of UBOS Contracts Committee which was eventually assigned the task of finalizing the procurement process following the advice of PP & DPA Authority.

Mr. Mashate took over the assignment without exercising due diligence by inquiring into the background of the matter. Had he done so, he would have noted the several initial anomalies highlighted in this Report relating to failure to apply the provisions of PP & DPA Act and Regulation in the procurement.

Mr. Mashate admitted during interview that he did not exercise any due diligence on the matter. He attributed his failure to do so on the pressure and urgency, which was being exerted by senior GoU officials for the procurement to be completed expeditiously.

- 5.1.5.2 Under the circumstances and considering that UBOS Contracts Committee took up the procurement of the Vendor for the NPDB & IS Project at an advanced stage, this Office strongly advises him against dereliction of duty.

5.1.6 Ms. B. Kasimbazi

- 5.1.6.1 Ms. Kasimbazi, as Chairperson of the Negotiation Team failed to execute her statutory duties as outlined in Regulation 222 of the PP & DPA Regulations. She failed to: -

- (i) Ensure that negotiations were conducted in accordance with all legal requirements, and

- (ii) Ensure that all members of the Negotiation Team have a common understanding of the process of negotiations and the objectives to be achieved.

The Negotiation Team chaired by Ms. Kasimbazi erred and acted in haste and bad faith to recommend to UBOS Contracts Committee that Face Technologies should be awarded the contract, when negotiations were not yet complete.

The Team informed the Committee that Face Technologies had fulfilled most of the requirements. This created the false impression that all the major issues had been resolved and all that therefore remained were only minor issues

The Negotiation Team, as already stated, did not disclose to UBOS Contracts Committee that Face Technologies, who's Proposal had been evaluated as best at USD 92,049,472.00, had also "floated" a Recovery Schedule proposing to recover USD 151 Million during the life of the BOT Project, 5 years, although this was not discussed at the negotiations.

Considering that the difference of USD 58,950,528.00 between the figures was very substantial, one wonders why this fact was not disclosed.

GoU Standing Orders, Code of Conduct and Ethics for Public Service, stipulate that a Public Officer is personally responsible for his or her official actions

The Standing Orders also require that a Public Officer should display, amongst other virtues, integrity dedication, and professionalism when discharging official duties. Ms. Kasimbazi failed to display integrity, dedication, and professionalism in her duties

This Office therefore directs Ms. Kasimbazi to show cause to IG why she should not be referred to the Appointing Authority which is the Public Service, ^{to be} to be formally reprimanded for not executing her

statutory duties as Chairperson of the Negotiation Team in accordance with the PP & DPA Regulations.

INSPECTORATE OF GOVERNMENT

KAMPALA

AUGUST 2006