



PUBLIC PROCUREMENT OVERSIGHT AUTHORITY
Transforming Procurement

National Bank Building
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When replying please quote:

P.O. Box 58535-00200
NAIROBI
KENYA

CASE FILE NO.35/2009 (9)

17th September, 2009

The General Manager,
NEC, Marubeni Corporation and Zetes Industries
4-2, Ohtemachi 1-Chome, Chiyoda - ku
Tokyo, Japan

RE: REVIEW AGAINST THE EXPRESSION OF INTEREST (EOI) FOR DESIGN, SUPPLY, INSTALLATION AND COMMISSIONING OF THE THIRD GENERATION NATIONAL IDENTITY CARD SYSTEM BASED ON SMART CARD TECHNOLOGY

Please refer to the above tender, which was advertised and processed by the Ministry of State for Immigration and Registration of Persons in which you were one of the candidates.

We would like to inform you that on 8th day of September, 2009, a Request for Review was lodged with the Public Procurement Administrative Review Board regarding pre-qualification of candidates.

You are required to forward to this Board information and arguments about the EOI by 25th September, 2009.

Further, you are required to appear on the 28th day of September, 2009 at 2.30 p.m. when the appeal under reference will be heard by this Board sitting at the PPOA Board room, National Bank Building, 10th Floor.

If you fail to appear the Applicant may proceed with the complaint and determination by order of the Board may be made in your absence.

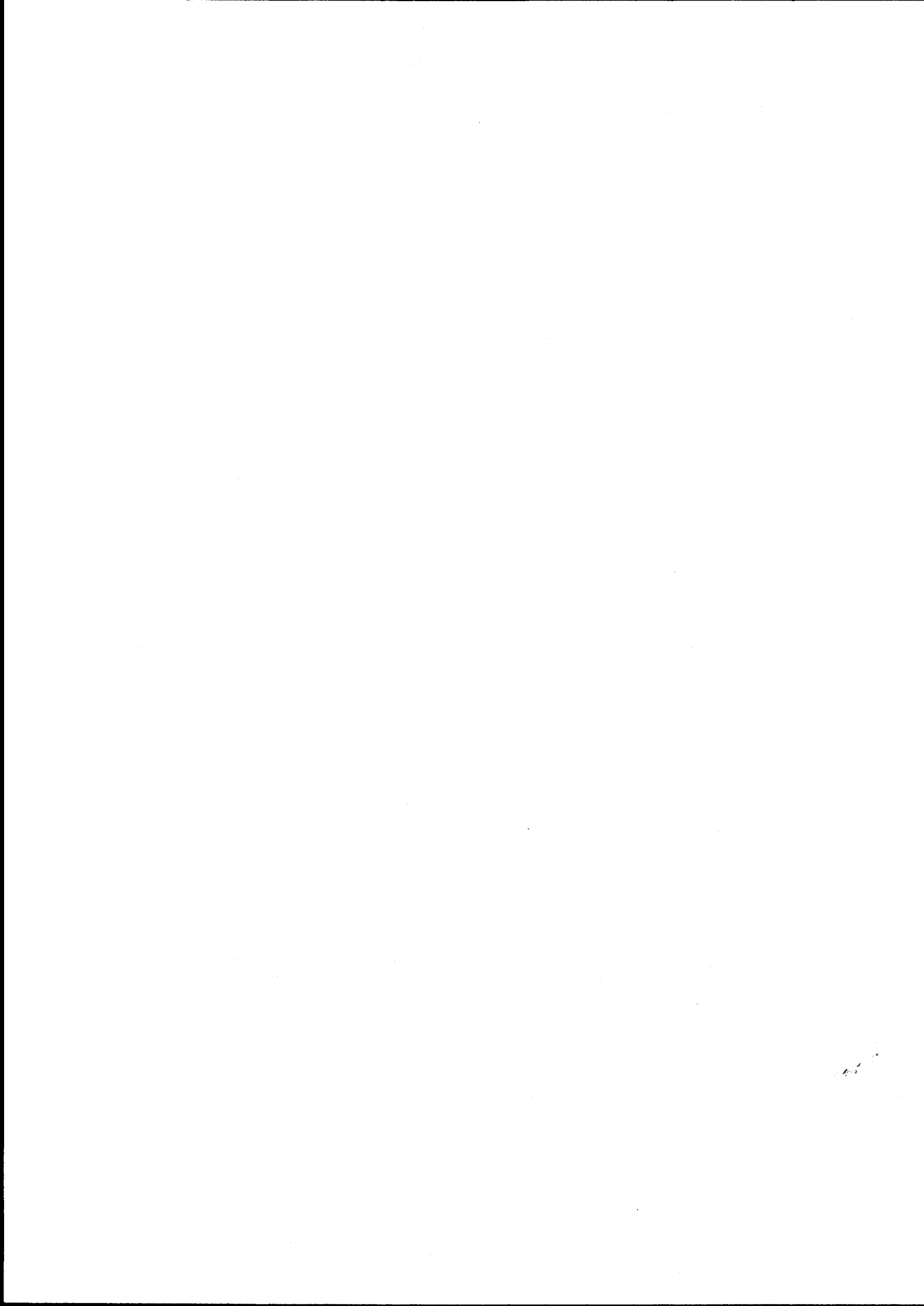
A copy of the Request for Review is attached hereto for your reference.

A handwritten signature in black ink, appearing to read 'Peter M Wangai', is written over a horizontal line.

Peter M Wangai
For: Board Secretary

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

(Encls)



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REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 35 OF 2009

BETWEEN

NATIONAL DATABASE & REGISTRATION
AUTHORITY (NADRA) PAKISTAN.....APPLICANT

AND

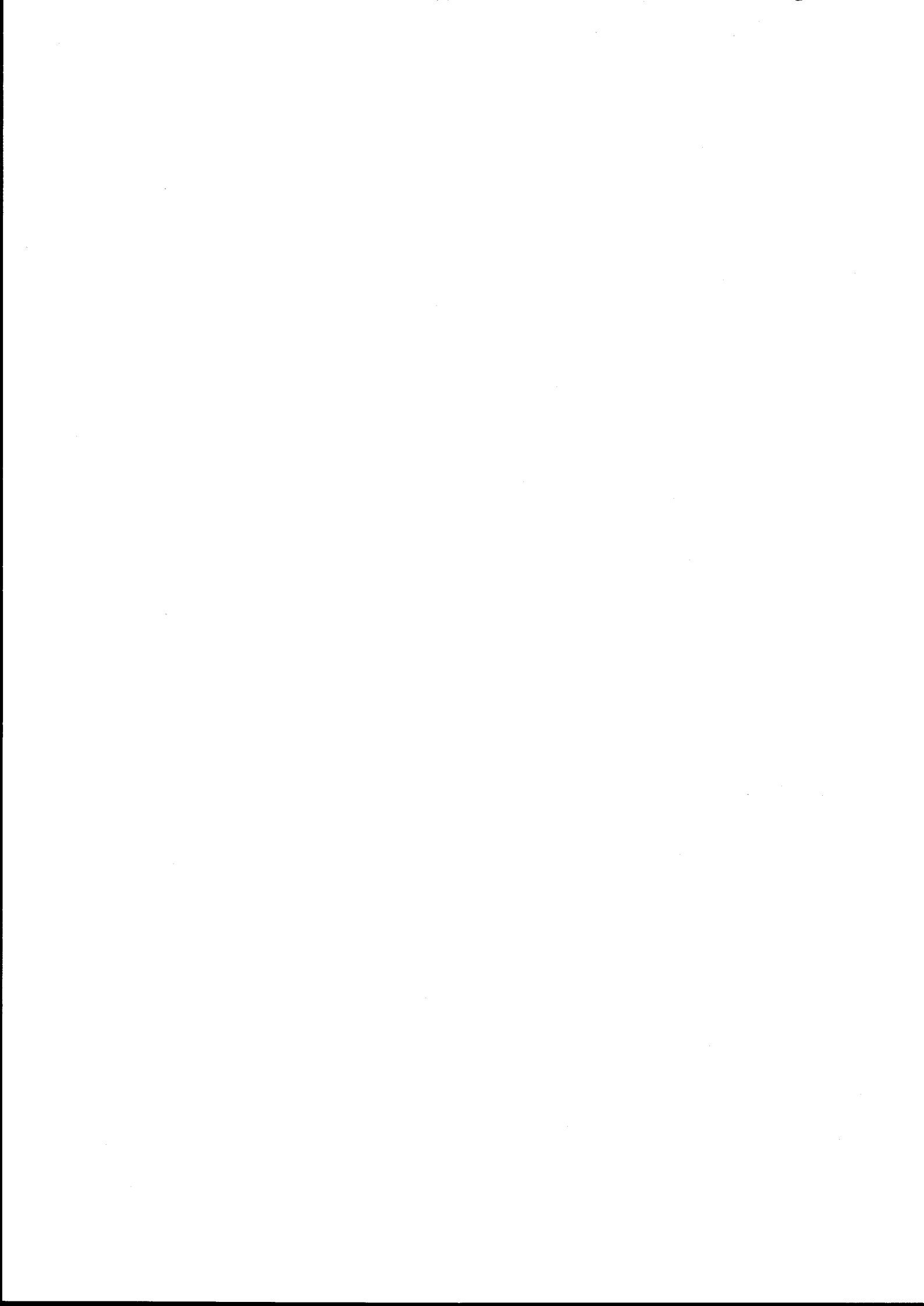
MINISTRY OF STATE FOR IMMIGRATION
AND REGISTRATION OF PERSONS.....RESPONDENT

Request for Review of the decision of the Ministry of State for Immigration and Registration of Persons of 26th August 2009 in the matter of the Expression of Interest (EOI) for the Design Supply, Installation and Commissioning of The Third Generation National Identity Card System Based on Smart Card Technology.

REQUEST FOR REVIEW

NADRA PAKISTAN the above named Applicant of Sector R-5/2 Shahra-e-Jamhuriat State Bank Building Islamabad Pakistan hereby request the Public Procurement Administrative Review Board to review the whole of the above mentioned decision on the following grounds namely:-

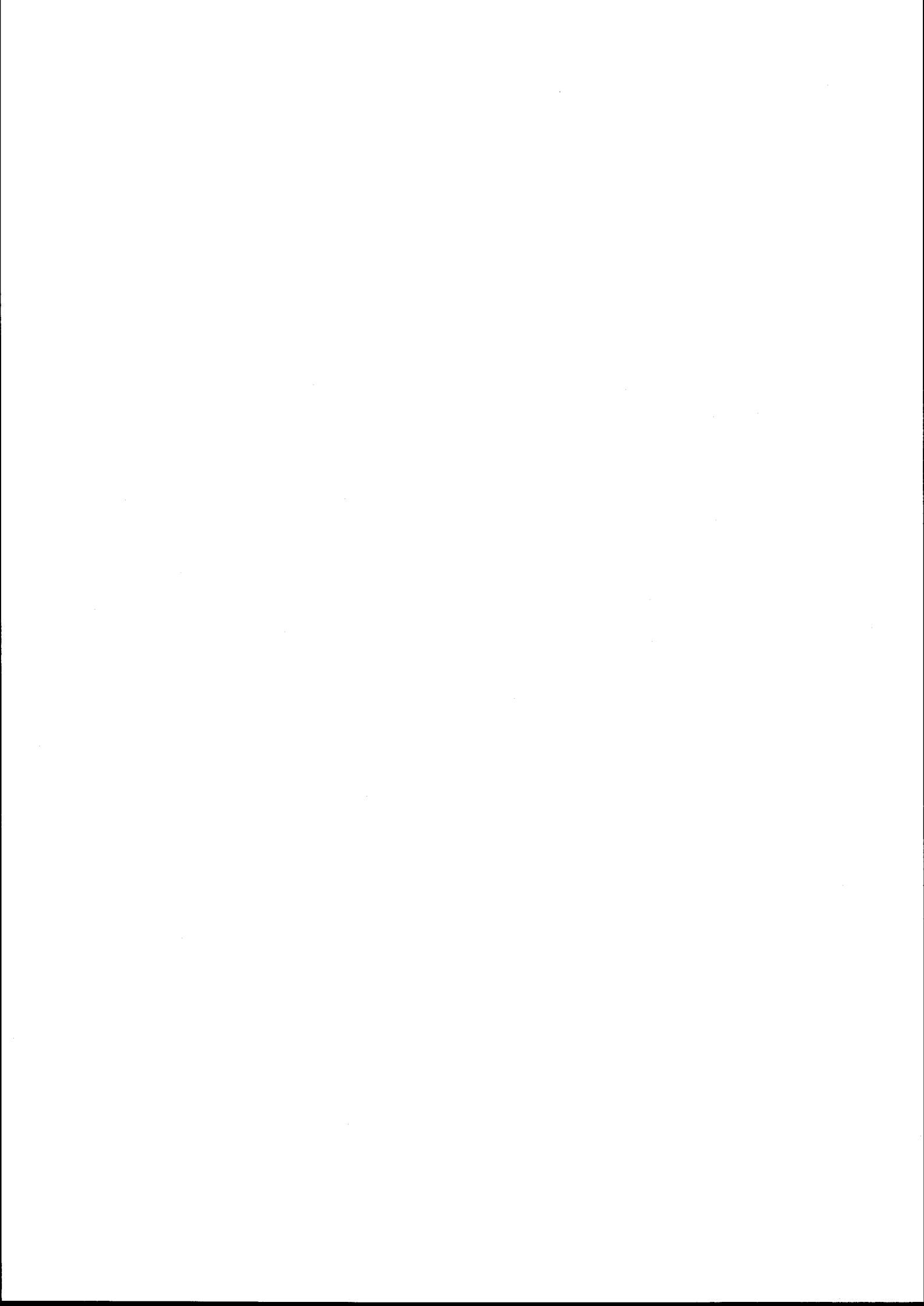
1. By a letter dated 26th August 2009 the Applicant was notified that its Expression of Interest (EOI) in respect of the above matter was unsuccessful.
2. By a letter dated 4th September 2009 the Applicant requested the Respondent to furnish the following;
 - a. Written Reasons as to why the Applicant's submissions were unsuccessful.
 - b. A copy of the final Evaluation Report of the Applicant's submissions.
3. It is the Applicant's case that the Respondent has failed to provide the written reasons as set out in ground 2 above within the requisite period contrary to the obligation imposed on the Respondent under Regulation 66(2) of the Public Procurement and Disposal Regulations.
4. It is the Applicant's case that it has the requisite experience technical expertise and professional competency to provide the service set out in the Expression of Interest and its disqualification from further participation in the Expression of Interest is capricious, prejudicial and unfair for the following reasons;



- a. The Applicant is well known in the Identification Documents industry and has been recognized by leading experts in the industry under the patronage of the reputed publication "ID World-The Players of the Auto ID Industry" as being among the Top fifty (50) Companies of e-Passport Technology in the world including Multi Biometric Identity Cards. This recognition has been conferred on the Applicant for three consecutive years 2005 – 2007.
- b. The Applicant has demonstrated its ability to perform large scale projects and has executed the single largest Contract for the supply of National Identity Cards anywhere in the world with the Government of Pakistan. This was done during the period 2005 – 2007 and provides for the issuance of over sixty five million (65,000,000) National Identity Cards.
- c. It is the Applicant's case that the Respondent's decision dated 26th August 2009 offends the spirit of Section 2 of the Public Procurement and Disposal Act 2005 which requires public entities to establish procurement practices that achieve inter-alia:-
 - (i) Efficiency and competence in the provision of the service or conduct of the work.
 - (ii) Fair competition and ensure fair treatment of competitors.
 - (iii) Integrity and fairness.
 - (iv) Transparency and accountability.
- d. The Applicant states that the Respondent has failed to adhere to the grounds set out in Section 2 of the Public Procurement and Disposal Act above since its capricious and prejudicial decision has led to the disqualification of an outstanding Candidate.

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- a. The Applicants attention has been drawn to the Eligibility requirements set out in the Respondent's Expression of Interest and in particular clause 1 (d) which lists as a requirement submission of Audited Accounts for 3years.
- b. The Applicant's attention has also been drawn to clause 1 (e) which lists as a requirement that the Candidate's turnover should be in excess of one hundred and twenty million United States Dollars (USD 120M).
- c. It is the Applicant's case that the requirement set out in clause 1 (e) above is ambiguous vague and does not promote fair procurement practice for the following reasons:-
 - (i) The Respondent has set out a requirement for Audited Accounts for three (3) years in clause 1 (d) but no period has been specified with respect to supply of details with regards to the Candidate's turnover. The Candidate



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cannot therefore be properly evaluated on its ability to perform the work in the long term.

- (ii) The Respondent has not indicated whether clause 1 (e) requires Candidates to furnish details of turnover with regards to the specific business activity of designing and supply of Identification Documents or whether a Candidate's turnover could include other business activity not relevant to the Expression of Interest. It is the Applicant's case that it would have been more appropriate for the Respondent to state that it required details of turnover in respect of a Candidate's Identification Document business alone in order to better assess the Candidate's submissions.
- (iii) Further it is the Applicant's case that a more appropriate measure of a Candidate's suitability would have been an enquiry into the kind of work or undertaking that the Candidate has participated in similar to the proposed work to be undertaken in the Respondent's Expression of Interest. It is the Applicant's view that such a requirement would require a Candidate to be better evaluated as to its ability to conduct the work set out in the Expression of Interest over and above a mere requirement of a high turnover.
- (iv) The Applicant states that it nonetheless met the requirements set out in clauses 1 (d) and 1 (e) of the Eligibility criteria more specifically for the following reasons:-
 - a. The Applicant submitted to the Respondent Audited Accounts for the period 2005 – 2008 which indicated that its turnover for the four year period was USD 145,507,430.
 - b. The Applicant's Audited Accounts for the period 2006 – 2008 indicated that its turnover was well above the threshold of USD 120 Million.
 - c. The Applicant's turnover for the period 2001 – 2008 was USD 203.96 Million.

this Memorandum the Applicant requests the Board for an Order that:-

The Respondent be directed to rescind its decision dated 26th August 2009 and to reinstate the Applicant as a candidate for the Expression of Interest and to shortlist and properly evaluate the Applicant's Expression of Interest (EOI) or in the alternative;

The Annulment of the procurement proceedings commenced by the Respondent in their entirety.

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DATED at Nairobi this

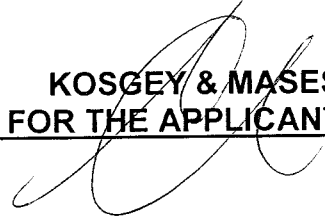
8th

day of

September

2009.

**KOSGEY & MASESE
ADVOCATES FOR THE APPLICANTS**



DRAWN & FILED BY:
KOSGEY & MASESE
ADVOCATES
HAZINA TOWERS, 19TH FLOOR
MONROVIAST/UTALII LN.
P.O. BOX 30317 - 00100
NAIROBI

TO BE SERVED UPON:
MINISTRY OF STATE FOR IMMIGRATION &
REGISTRATION OF PERSONS
NAIROBI

LODGED at Public Procurement Oversight Authority on the _____ day of _____ 2009

SIGNED _____
BOARD SECRETARY

