

SUPREME COURT
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Republic of the Philippines
SUPREME COURT

En Banc
Manila

**SMARTMATIC CORPORATION,
SMARTMATIC PHILIPPINES,
INC.**

**TIM
AND**

PHILIPPINES,

G.R. No. 270564

Petitioners,

For: Petition for *Certiorari*
under Rule 65 of the Rules
of Court with Prayer for
the Issuance of a
Temporary Restraining
Order and/or Writ of
Preliminary
Injunction with urgent
motion for special raffle

**COMMISSION ON ELECTIONS
EN BANC, ELISEO MIJARES RIO
JR, AUGUSTO CADELIÑA
LAGMAN, FRANKLIN
FAYLOGA YSAAC AND
LEONARDO OLIVERO ODOÑO**

Respondents,

X-----X

**MANIFESTATION
WITH
REITERATIVE MOTION
(FOR THE ISSUANCE OF TEMPORARY
RESTRAINING ORDER AND/OR STATUS
QUO ANTE ORDER)**

Petitioners **SMARTMATIC TIM CORPORATION**
("Smartmatic TIM") and **SMARTMATIC PHILIPPINES, INC.**
("Smartmatic PH") (collectively, the "Petitioners" or "Smartmatic"),
by counsel, respectfully state:

1. On 18 December 2023, Petitioners filed a *Manifestation and Supplement to the Petition for Certiorari dated 6 December 2023 (With Application for the Issuance of a Status Quo Ante Order)* (“Manifestation and Supplement”) to inform this Honorable Court of the developments subsequent to the filing of the *Petition for Certiorari (with Extremely Urgent Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) with Urgent Motion for Special Raffle* dated 6 December 2023 (the “Petition”).

2. As previously manifested before this Honorable Court, during the submission of bids on 14 December 2023, the Special Bids and Awards Committee (“SBAC”) refused to accept the bidding documents of a joint venture comprised of SMMT-TIM 2016 Inc., Smartmatic Holdings Inc., and Jarltech International Inc., (“Smartmatic JV”), a separate entity from Smartmatic TIM Corporation (“Smartmatic TIM”) and Smartmatic Philippines, Inc. (“Smartmatic PH”).¹

3. On the same date, the opening of bids proceeded with the participation of only one (1) bidder - Miru Systems (“Miru”). Following the declaration of a failed bidding due to Miru’s failure to comply with the requirements under Republic Act (“R.A.”) No. 9184 and its Implementing Rules and Regulations (“2016 IRR”), the SBAC then announced that bidding would be conducted anew on 4 January 2024 (subsequently moved to 8 January 2024).²

4. On 8 January 2024, the COMELEC and the SBAC again proceeded with the bid submission where the SBAC Secretariat confirmed that, upon instructions by the COMELEC and pursuant to the COMELEC’s Resolution dated 29 November 2023 (“Assailed Resolution”), it refused to accept the bid of Smartmatic JV.³ Again, with the sole participation of Miru, as the lone bidder, the SBAC proceeded to open the bid and subsequently declared Miru as eligible.⁴ The SBAC is now set to proceed with the post-qualification process.

5. As a result of its exclusion from the procurement proceedings, Smartmatic JV was unable to participate and submit a bid that would possibly be the most advantageous to government. In this

¹ See Minutes of Opening of Bids on 14 December 2023, a copy of which is attached hereto as Annex “A” and made an integral part hereof.

² See PhilStar, Rhodina Villanueva, Comelec extends bids deadline for 2025 polls system available at <https://www.philstar.com/headlines/2023/12/24/2321070/comelec-extends-bids-deadline-2025-polls-system> (last accessed on 29 December 2023).

³ See Live Stream of Special Bids and Awards Committee - Automated Election System for 2025 National and Local Elections accessible at <https://fb.watch/ptKVowGf00/>.

⁴ *Id.*

regard, Smartmatic JV had its bidding documents all ready and prepared for submission with the goal of preserving the integrity of its potential bid, but, as mentioned above, the same was denied receipt by the COMELEC even just for safekeeping.

6. Thus, the baseless exclusion of a bidder may have put the integrity of the competitive bidding process in question as any deficiencies in the submissions of parties are best determined under a truly competitive environment, as irregularities in the bidding documents would have otherwise been spotted and raised by a bidder.

7. To emphasize, government procurements are governed by the principles of transparency, competitiveness, streamlined procurement process, accountability and public monitoring.⁵ In *Public Estates Authority v. Bolinao Security and Investigation Service, Inc.*,⁶ this Honorable Court held that “competitive public bidding aims to protect the public interest by giving the public the best possible advantages through open competition,” and that “[i]t is a mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts.” Clearly, the purpose of competitive bidding is to encourage as many participants as possible in order to ensure that the public secures the best bid.

8. It bears noting that following the submission, opening and evaluation of bids, Miru shall still undergo post-qualification assessment to determine whether it complies with all the requirements and conditions specified in the bidding documents.⁷ Thereafter, Miru, upon notice, must be required to submit to the SBAC its latest income and business tax returns, and other appropriate licenses and permits required by law and stated in the bidding documents.⁸ Miru may still be disqualified if it fails to submit any of the post-qualification requirements on time, or if the SBAC finds doubt on the veracity thereof.⁹ It is only after the completion of the post-qualification process that a Notice of Award may be issued to the winning bidder.¹⁰

9. As the procurement process for the 2025 Automated Election System (“AES”) has not yet been fully concluded, it is prayed that this Honorable Court intervene to enjoin any award resulting from the flawed bidding.

⁵ Implementing Rules and Regulations of Republic Act No. 9184 (“2016 IRR”), Sec. 3.

⁶ G.R. No. 158812, 5 October 2005.

⁷ 2016 IRR, Rule X, Sec. 34.1.

⁸ 2016 IRR, Rule X, Sec. 34.2.

⁹ *Ibid.*

¹⁰ 2016 IRR, Rule XI.

10. In this respect, Smartmatic, respectfully reiterates its prayer for the issuance of a temporary restraining order, a *status quo ante* order, and the issuance of an order annulling any and all proceedings which proceeded/will proceed pursuant to the implementation of the Assailed Resolution.

PRAYER

WHEREFORE, Petitioners **SMARTMATIC TIM CORPORATION** and **SMARTMATIC PHILIPPINES, INC.**, respectfully pray that:

1. Pending consideration of the Petition, **ISSUE a TEMPORARY RESTRAINING ORDER and/or WRIT OF PRELIMINARY INJUNCTION**, effective from the date of its issuance until such time as the decision in this case attains finality, enjoining Public Respondent Commission on Elections *En Banc* and anyone acting for or under its authority, direction, control, or instruction, and any other entity, including the Special Bids and Awards Committee for the 2025 AES, from performing any act in connection with or pursuant to the *Resolution* dated 29 November 2023 giving effect to the disqualification of Smartmatic and/or its related entities, and such other act in connection with, or pursuant to, the *Resolution* dated 29 November 2023.

2. **ISSUE a STATUS QUO ANTE ORDER** to allow Smartmatic and/or its related entities to participate in the procurement process for the 2025 AES, and prevent the COMELEC and/or SBAC from performing any further act/s which would preempt this Honorable Court's resolution on the Petition.

3. **ISSUE an Order ANNULING** any and all proceedings which have proceeded/will proceed pursuant to the implementation of the *Resolution* dated 29 November 2023.

4. **ISSUE a Writ of Certiorari ANNULING, REVERSING, and SETTING ASIDE** the *Resolution* dated 29 November 2023 for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Smartmatic likewise prays for such further or other relief as may be deemed just or equitable.

Taguig City for Manila, 10 January 2023.

ANGARA ABELLO CONCEPCION REGALA & CRUZ

*Counsel for Petitioners Smartmatic TIM Corporation and
Smartmatic Philippines Inc.*

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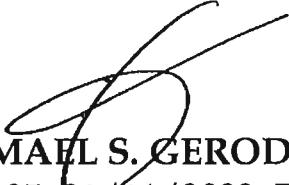
PTR No. A-6155389; 01/09/2024; Taguig City

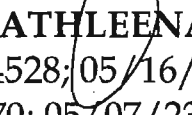
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COMMISSION ON ELECTIONS
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Palacio del Gobernador Building,
General Luna Street, Intramuros,
Manila 1002

R. R. No.: RE 854 963 684 22
Date: 11 JAN 2024

LEONARDO OLIVERA ODOÑO
Private Respondent
19871 Willow Street,
Executive Heights, Bgy. Sun Valley,
Paranaque City

R. R. No.: RE 854 963 675 22
Date: 11 JAN 2024

ATTY. JOSE M. JOSE
Counsel for the Private Respondents
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R. R. No.: RE 854 963 667 22
Date: 11 JAN 2024

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legaspi Village
1229 Makati City
docket@osg.gov.ph

R. R. No.: RE 854 963 653 22
Date: 11 JAN 2024

EXPLANATION

Undersigned counsel respectfully manifests that the foregoing **MANIFESTATION WITH REITERATIVE MOTION (FOR THE ISSUANCE OF TEMPORARY RESTRAINING ORDER AND/OR STATUS QUO ANTE ORDER)** will be served by registered mail because of time and distance constraints, as well as the limited number of office messengers, render personal service impracticable.


GE-AN KATHLEENA SALUD

OFFICE COPY

REPUBLIC OF THE PHILIPPINES)
TAGUIG CITY) S.S.

AFFIDAVIT OF SERVICE

I, **ARNEL E. DIAMANTE**, as Messenger and Clerk of the law firm **ANGARA ABELLO CONCEPCION REGALA & CRUZ**, with office address at the 22/F ACCRALAW Tower, 2nd Avenue cor. 30th Street, Crescent Park West, Bonifacio Global City, 1635 Taguig, Metro Manila, after being duly sworn, depose and say that:

On 11 January 2024, I served a copy of **MANIFESTATION WITH REITERATIVE MOTION (FOR THE ISSUANCE OF TEMPORARY RESTRAINING ORDER AND/OR STATUS QUO ANTE ORDER)** in the case entitled "SMARTMATIC TIM CORPORATION AND SMARTMATIC PHILIPPINES, INC., COMMISSION ON ELECTIONS EN BANC, ET. AL.," docketed as G.R. No. 270564, in the Supreme Court, *En Banc*, Manila, pursuant to rule 13 of the rules of court as follows:

By Registered Mail:

COMMISSION ON ELECTIONS

Public Respondent

Palacio del Gobernador Building,
General Luna Street, Intramuros,
Manila 1002

RE 854 963 684 22
LEONARDO OLIVERA ODOÑO

Private Respondent

19871 Willow Street,
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Paranaque City

RE 854 963 675 22
ATTY. JOSE M. JOSE

Counsel for the Private Respondents

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jmjose64@yahoo.com

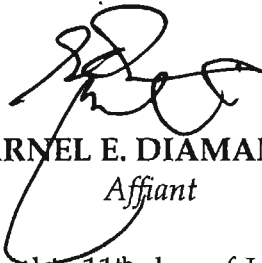
RE 854 963 667 22
OFFICE OF THE SOLICITOR GENERAL

134 Amorsolo Street, Legaspi Village
1229 Makati City

docket@osg.gov.ph

RE 854 963 653 22

by depositing a copy thereof on 11 January 2024 in the post office of Manila, in sealed envelope plainly addressed to them, with postage fully prepaid, as evidenced by Registry Receipt No. _____, attached hereto after the name of the addressee, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered.



ARNEL E. DIAMANTE
Affiant

SUBSCRIBED AND SWORN to before me this 11th day of January 2024, at Taguig City, Philippines, affiant who is personally known to me, exhibiting to me the following:

Affiant	Competent Evidence of Identity	
	Type	Details
ARNEL E. DIAMANTE	Driver's License	No. N01-10-0168082 Expiring on 9/26/2024
	Pag-Ibig Loyalty Card	No. 1210-3299-3779

Doc. No. 55 ;
 Page No. 12 ;
 Book No. 5 ;
 Series of 2024.




ATTY. CHRISTIANNA MANAMI Y. SALUD
 Notary Public for Taguig City
 Until December 31, 2024
 PTR No. A-6129348; January 09, 2024 – Taguig City
 IBP No. 300181; January 02, 2024 – Makati City
 Appointment / Commission No. 146 (2023-2024)
 Roll No. 81693
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 MCLE Compliance No. N/A (Admitted on 24 May 2022)

5.10022/Smazmatic