



Republic of the Philippines  
**COMMISSION ON ELECTIONS**  
Intramuros, Manila

IN THE MATTER OF THE BIDDING	MELO, Jose A.R.	Chairman
FOR THE AUTOMATION OF THE	BRAWNER, Romeo A.	Commissioner
2008 ELECTIONS IN THE	SARMIENTO, Rene V.	Commissioner
AUTONOMOUS REGION IN MUSLIM	FERRER, Nicodemo T.	Commissioner
MINDANAO	MACARAMBON, Moslemen T.	Commissioner

x-----x Promulgated on: 11 April 2008

**RESOLUTION NO. 8436**

**WHEREAS**, it is the avowed policy of the Commission on Elections to modernize the 2010 National and Local Elections through the automation of the electoral process;

**WHEREAS**, part of its preparation for the modernization of the 2010 National and Local Elections is the projected automation of the 2008 elections in the Autonomous Region in Muslim Mindanao;

**WHEREAS**, in pursuance of this goal, the Commission on Elections conducted a public bidding for the automation of the 2008 elections in the Autonomous Region in Muslim Mindanao which was participated in by only two bidders;

**WHEREAS**, one bidder was disqualified for non-eligibility, while the other bidder was allowed to submit its bid which subsequently underwent technical evaluation by the Commission on Elections with the assistance of the National Computer Center and the guidance of the Advisory Council<sup>1</sup>, as mandated by Republic Act 9369;

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<sup>1</sup> Section 9, RA 9369 provides: "The Commission shall create an Advisory Council, hereafter referred to as the Council, which shall be convened not later than eighteen (18) months prior to the next schedule electoral exercise, and deactivated six months after completion of canvassing: *Provided*, for purposes of the 2007 elections, the Advisory Council shall be immediately convened within ten (10) days after the effectivity of this Act. The Council shall be composed of the following members, who must be registered Filipino voters, of known independence, competence and probity: a) The Chairman of the Commission on Information and Communications Technology (CICT) who shall act as the chairman of the council; b) One member from the Department of Science and Technology; c) One member from the Department of Education; d) One member representing the academe, to be selected by the chair of the Advisory Council from among the list of nominees submitted by the country's academic institutions; e) Three members representing ICT professional organizations to be selected by the chair of the Advisory Council from among the list of nominees submitted by Philippines-based ICT professional organization. Nominees shall be individuals, at least one of whom shall be experience in managing or implementing large-scale IT projects; f) Two members representing nongovernmental electoral reform organizations, to be selected by the chair of the Advisory Council from among the list of nominees submitted by the country's nongovernmental electoral reform organizations."

**WHEREAS**, the results of the technical evaluation revealed that the remaining bid failed to comply with several mandatory technical requirements set out in the Request for Proposal and in the various Bid Bulletins duly issued by the Bids and Awards Committee;

**WHEREAS**, the Bids and Awards Committee referred the said findings of non-compliance to the Advisory Council for its comment;

**WHEREAS**, the Advisory Council opined that while the bidder was, in fact, non-compliant, it nonetheless offered substitute solutions which the Council deemed to be in substantial compliance with the requirements;

**WHEREAS**, the Commission highly appreciates the effort devoted by the Advisory Council to the realization of the Commission on Elections Modernization agenda;

**WHEREAS**, the Bids and Awards Committee has declared that the finding of substantial compliance is not enough to cure the defect of the bidder's bid inasmuch as, pursuant to bidding rules, the evaluation criteria used are non-discretionary in nature and as such do not admit of partial compliance regardless of how substantial such partial compliance might be;

**WHEREAS**, the Commission notes with approval the Bids and Awards Committee's exercise of caution and prudence in this matter, considering that the procurement is for an automated election system and as such is invested with great public interest;

**WHEREAS**, the Commission shares the Bids and Awards Committee's determination to strictly abide by the bidding rules governing this procurement, conformably with the decision on the Supreme Court in *Information Technology Foundation of the Philippine v. the Commission on Elections (G.R. No. 159139, 13 January 2004 )*;

**NOW, THEREFORE**, after extensive deliberation, the Commission on Elections *en banc* resolved, as it hereby resolves, to **ADOPT *in toto*** the following recommendations of the Bids and Awards Committee contained in its Memorandum dated the 8<sup>th</sup> of April 2008:

- a. to **REJECT** the bid tendered by Smartmatic Sahi Joint Venture for Lots 1a, 2a, 2b, and 3, in connection with the automation of the 2008 elections in the Autonomous Region in Muslim Mindanao, for the following reasons:
  - i. **For Lot 1a** (Electronic Voting System with Integrated Election Management System): **Failure to comply with Evaluation Criterion 34** - *the requirement that the Electronic Voting System "shall have functionality for saving a backup copy of all other reports generated to the specified external storage device;" under the RFP, the "specified external storage device" shall be an external write-once-read-many data storage device;*<sup>2</sup>

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<sup>2</sup> Annex A – Evaluation Reports based on the RFP ( Lot 1-A ), page 5

- ii. **For Lot 2a** (Secure Electronic Transmission System for Election Results): **Failure to comply with Evaluation Criterion 20** – *the requirement that the Electronic Transmission System “shall employ redundancy measures for all its transmission sites to fall back on in case the primary transmission facility fails”*;<sup>3</sup>
- iii. **For Lot 2b** (Consolidation/Canvassing System - CCS): **Failure to comply with Evaluation Criteria 7, 13, 15a, 15b, 20, and 21**,<sup>4</sup> **as well as the requirement for a Central Back-Up System**<sup>5</sup>– *these requirements are as follows:*
  - 1. **Criterion 7** – *the CCS shall recognize its authorized users with the use of physical security devices, such as USB flash drives or PCMCIA cards, with digital certificates aside from the use of user IDs and passwords (the bidder’s system has no physical security device) ;*
  - 2. **Criterion 13** – *The CCS shall keep the electronically transmitted results (advance copy and canvassing copy) in separate internal data storage locations (the bidder’s system does not have specific locations for advance copy, and canvass copy);*
  - 3. **Criteria 15a and 15b** – *The CCS shall enable its user to choose its source data for consolidation/canvassing from the following locations only: Internal data storage location for advance copy, and Internal data storage location for canvassing copy (the bidder’s system stores the data in one database only and does not have specific locations for advance copy, and canvass copy);*
  - 4. **Criterion 20** – *The CCS shall create files for the following: encrypted regional consolidated results, regional election results in report format, regional winning candidates in report format, audit log report format, and statistical report in report format (the bidder’s system does not create files in specific locations since all files are stored in one database)*
  - 5. **Criterion 21** – *The created files shall be saved in their respective data storage locations (the bidder’s system does not create files in specific locations; all files are stored in one database)*
  - 6. **Central Back-Up System** - *There shall be a Central Back-Up System at the Central Back-Up Center (the bidder failed to present a Central-Back-up System for evaluation)*
- iv. **For Lot 3** (Systems Integration and Over-all project Management): **With the above-failures, Lot 3 has become moot;** and

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<sup>3</sup> Annex B – Evaluation Reports based on the RFP ( Lot 2-A ), page 2

<sup>4</sup> Annex C – Evaluation Reports based on the RFP (Lot 2-B), pages 1-5

<sup>5</sup> Annex C – Evaluation Reports based on the RFO (Lot 2-B), pages 18-19

- b. to **REQUEST** the Advisory Council to formalize recommendations for the automation of the 2010 National and Local Elections and to accordingly prepare the appropriate Request for Proposal; and
- c. to **DIRECT** the Senior Staff to collaborate with the Advisory Council on the formulation of an implementable timetable for the automation of the 2010 National and Local Elections, which shall call for the public bidding process to begin not later than June 2008 and which shall feature at least one mock election exercise in the latter half of 2008 and another in the second quarter of 2009.

Let the Bids and Awards Committee implement this Resolution.

**SO ORDERED.**

(Sgd.) **JOSE A.R. MELO**  
Chairman

(Sgd.) **ROMEO A. BRAWNER**  
Commissioner

(Sgd.) **RENE V. SARMIENTO**  
Commissioner

(Sgd.) **NICODEMO T. FERRER**  
Commissioner

(Sgd.) **MOSLEMEN T. MACARAMBON**  
Commissioner