



## RESOLUTION NO. 35-2014

---

### **DENYING THE REQUEST OF AES WATCH TO BLACKLIST SMARTMATIC TO PROHIBIT IT FROM PARTICIPATING IN THE PROCUREMENT ACTIVITIES OF THE COMMISSION ON ELECTIONS (COMELEC) ON THE LEASE OF ELECTION MANAGEMENT SYSTEM AND PRECINCT-BASED OPTICAL MARK READER OR OPTICAL SCAN SYSTEM AND ON THE LEASE OF ELECTION MANAGEMENT SYSTEM AND PRECINCT-BASED DIRECT RECORDING ELECTRONIC**

**WHEREAS**, Republic Act (RA) No. 9184, entitled “An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and For Other Purposes,” took effect on 26 January 2003, while its revised Implementing Rules and Regulations (IRR) took effect on 2 September 2009;

**WHEREAS**, the Government Procurement Policy Board (GPPB), under Section 63 of RA 9184 and its IRR, is mandated to formulate and amend public procurement policies, rules and regulations, and amend the IRR, whenever necessary;

**WHEREAS**, Section 69 of RA 9184 and its revised IRR grants the Head of the Procuring Entity the authority to impose on bidders or prospective bidders the administrative penalty of suspension from participating in public bidding for violations committed during and after the bidding activity;

**WHEREAS**, pursuant to Section 69.4 of the revised IRR of R.A. 9184, the GPPB issued Resolution No. 09-2004 approving the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants which sets the procedure for the suspension and blacklisting of erring bidders/contractors during the competitive bidding stage and contract implementation stage;

**WHEREAS**, in a letter dated 06 November 2014 to GPPB-TSO Executive Director Dennis S. Santiago, the AES Watch requested the “blacklist(ing) of Smartmatic and to prohibit all its subsidiaries and representative offices from participating in any Philippine government procurement (including negotiated procurement)”;

**WHEREAS**, the AES Watch’s request was thoroughly discussed and deliberated upon by the members of GPPB during its 8<sup>rd</sup> GPPB and 7<sup>th</sup> IATWG Joint Meeting on 16 December 2014;

**NOW, THEREFORE**, for and in consideration of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve, the following:

1. **ISSUE** Policy Matter Opinion reiterating that GPPB has no authority/power to blacklist a bidder/contractor as this rests upon the Procuring Entity to perform;
2. **REMIND** COMELEC that under Section 69 of the RA 9184 and its revised IRR and the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants, it is the Procuring Entity, through the Head of the Procuring Entity, that has the authority to Blacklist an erring bidder; and
3. **ADVICE** COMELEC that being the party-in-interest, it should undertake all the necessary and legal remedies to protect its rights under the Procurement law, its associated rules and other applicable laws, rules and regulations.

This resolution shall take effect immediately.

**APPROVED** this 16<sup>th</sup> day of December 2014 at Pasig City, Philippines.

(Sgd.)

---

**DEPARTMENT OF BUDGET AND  
MANAGEMENT**

---

**NATIONAL ECONOMIC AND  
DEVELOPMENT AUTHORITY**

(Sgd.)

---

**DEPARTMENT OF EDUCATION**

---

**DEPARTMENT OF ENERGY**

(Sgd.)

---

**DEPARTMENT OF FINANCE**

---

**DEPARTMENT OF HEALTH**

---

**DEPARTMENT OF THE INTERIOR AND  
LOCAL GOVERNMENT**

---

**DEPARTMENT OF NATIONAL  
DEFENSE**

(Sgd.)

---

**DEPARTMENT OF PUBLIC WORKS AND  
HIGHWAYS**

---

**DEPARTMENT OF SCIENCE AND  
TECHNOLOGY**

---

**DEPARTMENT OF TRADE AND  
INDUSTRY**

(Sgd.)  

---

**DEPARTMENT OF TRANSPORTATION  
AND COMMUNICATIONS**

(Sgd.)  

---

**PRIVATE SECTOR REPRESENTATIVE**

Attested by:

(Sgd.)  

---

**DENNIS S. SANTIAGO**  
*Board Secretary, GPPB*  
*Executive Director, GPPB-TSO*