



Republic of the Philippines  
**Supreme Court**  
**Manila**

**EN BANC**

**ARCHBISHOP FERNANDO R.  
CAPALLA, OMAR SOLITARIO ALI  
and MARY ANNE L. SUSANO,  
Petitioners,**

**G.R. No. 201112**

**-versus-**

**THE HONORABLE COMMISSION  
ON ELECTIONS,  
Respondent.**

X-----X

**SOLIDARITY FOR SOVEREIGNTY  
(S4S) represented by Ma. Linda  
Olaguer; RAMON PEDROSA,  
BENJAMIN PAULINO SR., EVELYN  
CORONEL, MA. LINDA OLAGUER  
MONTAYRE, and NELSON T.  
MONTAYRE,  
Petitioners,**

**G.R. No. 201121**

**-versus-**

**COMMISSION ON ELECTIONS  
represented by its Chairman,  
Commissioner SIXTO S.  
BRILLANTES, JR.,  
Respondent.**

X-----X

**TEOFISTO T. GUINGONA, BISHOP  
BRODERICK S. PABILLO, SOLITA  
COLLAS MONSOD, MARIA  
CORAZON MENDOZA ACOL, FR.  
JOSE DIZON, NELSON JAVA  
CELIS, PABLO R. MANALASTAS,  
GEORGINA R. ENCANTO and  
ANNA LEAH E. COLINA,  
Petitioners,**

**G.R. No. 201127**

**-versus-**

**COMMISSION ON ELECTIONS and  
SMARTMATIC TIM  
CORPORATION,  
Respondents.**

X-----X  
**TANGGULANG DEMOKRASYA  
(TAN DEM), INC., EVELYN L.  
KILAYKO, TERESITA D.  
BALTAZAR, PILAR L. CALDERON  
and ELITA T. MONTILLA,  
Petitioners,**

**G.R. No. 201413**

**Present:**

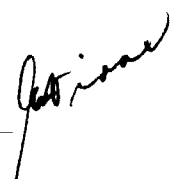
SERENO, C.J.,  
CARPIO,\*  
VELASCO, JR,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,\*\*  
ABAD,  
VILLARAMA, JR.,  
PEREZ,\*  
MENDOZA,  
REYES, and  
PERLAS-BERNABE, JJ.

**-versus-**

**COMMISSION ON ELECTIONS and  
SMARTMATIC-TIM  
CORPORATION,  
Respondents.**

**Promulgated:**

**OCTOBER 23, 2012**



X-----X

\* On official leave.  
\*\* On leave.

**RESOLUTION****PERALTA, J.:**

Before the Court are the Motions for Reconsideration separately filed by movants Teofisto T. Guingona, Bishop Broderick S. Pabillo, Solita Collas Monsod, Maria Corazon Mendoza Acol, Fr. Jose Dizon, Nelson Java Celis, Pablo R. Manalastas, Georgina R. Encanto and Anna Leah E. Colina (herein referred to as Guingona, *et al.*) in G.R. No. 201127;<sup>1</sup> Solidarity for Sovereignty (S4S) represented by Ma. Linda Olaguer, Ramon Pedrosa, Benjamin Paulino Sr., Evelyn Coronel, Ma. Linda Olaguer Montayre, and Nelson T. Montayre (referred to as S4S, *et al.*) in G.R. No. 201121;<sup>2</sup> and Tanggulang Demokrasya (Tan Dem), Inc., Evelyn L. Kilayko, Teresita D. Baltazar, Pilar L. Calderon and Elita T. Montilla (Tan Dem, *et al.* for brevity) in G.R. No. 201413.<sup>3</sup> Movants implore the Court to take a second look at the June 13, 2012 Decision<sup>4</sup> dismissing their petitions filed against respondents Commission on Elections (Comelec), represented by its Chairman Commissioner Sixto S. Brillantes, Jr. (Chairman Brillantes), and Smartmatic-TIM Corporation (Smartmatic-TIM).

For a proper perspective, the facts as found by the Court in the assailed decision are briefly stated below:

On July 10, 2009, the Comelec and Smartmatic-TIM entered into a *Contract for the Provision of an Automated Election System for the May 10, 2010 Synchronized National and Local Elections* (AES Contract) which is a Contract of Lease with Option to Purchase (OTP) the goods listed therein

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<sup>1</sup> *Rollo* (G.R. No. 201413), pp. 847-872.

<sup>2</sup> *Id.* at 893-908.

<sup>3</sup> *Id.* at 946-953.

<sup>4</sup> *Id.* at 557-591.

consisting of the Precinct Count Optical Scan (PCOS), both software and hardware.<sup>5</sup> The Comelec was given until December 31, 2010 within which to exercise the option but opted not to exercise the same except for 920 units of PCOS machines with the corresponding canvassing/consolidation system (CCS) for the special elections in certain areas in Basilan, Lanao del Sur and Bulacan.<sup>6</sup>

On March 6, 2012, the Comelec issued Resolution No. 9373 resolving to seriously consider exercising the OTP subject to certain conditions.<sup>7</sup> It issued another Resolution numbered 9376 resolving to exercise the OTP in accordance with the AES Contract.<sup>8</sup> On March 29, 2012, it issued Resolution No. 9377 resolving to accept Smartmatic-TIM's offer to extend the period to exercise the OTP until March 31, 2012.<sup>9</sup> The Agreement on the Extension of the OTP under the AES Contract (Extension Agreement) was eventually signed on March 30, 2012.<sup>10</sup> Finally, it issued Resolution No. 9378 resolving to approve the Deed of Sale between the Comelec and Smartmatic-TIM to purchase the latter's PCOS machines to be used in the upcoming 2013 elections.<sup>11</sup> The Deed of Sale was forthwith executed.<sup>12</sup>

Claiming that the foregoing Comelec issuances and transactions entered pursuant thereto are illegal and unconstitutional, movants filed separate petitions for *certiorari*, prohibition and mandamus before the Court.

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<sup>5</sup> *Id.* at 559.

<sup>6</sup> *Id.* at 559-560.

<sup>7</sup> *Id.* at 560.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 560-561.

<sup>12</sup> *Id.* at 561.

Movants failed to obtain a favorable decision when the Court rendered a Decision<sup>13</sup> on June 13, 2012 dismissing their petitions. Hence, the motions for reconsideration based on the following grounds:

**G.R. No. 201127**

I. THE HONORABLE COURT, WITH ALL DUE RESPECT, ERRED IN HOLDING THAT THE PERIOD OF THE OPTION TO PURCHASE HAS NOT EXPIRED;

II. THE HONORABLE COURT, WITH ALL DUE RESPECT, ERRED IN HOLDING THAT THERE WAS NO SUBSTANTIAL AMENDMENT TO THE AES CONTRACT; [AND]

II. THE HONORABLE COURT, WITH ALL DUE RESPECT, ERRED IN HOLDING THAT THE SUBJECT AMENDMENT IS ADVANTAGEOUS TO THE PUBLIC.<sup>14</sup>

Movants Guingona, *et al.* disagree with the Court's interpretation of Article 2.2 of the AES Contract and insist that the use of the words "without prejudice" and "surviving" explicitly distinguished the "period of the option to purchase" from the "Term of this Contract." They thus conclude that the warranty provision and the OTP are covered by a totally different period and not by the term of the AES Contract.<sup>15</sup> They also argue that the bid bulletins relative to the AES Contract expressly stated the deadline for Comelec to exercise the OTP<sup>16</sup> and that the parties intended that the stated period be definite and non-extendible.<sup>17</sup> Movants likewise aver that the Court erred in holding that there was no substantial amendment to the AES Contract.<sup>18</sup> Citing *San Diego v. The Municipality of Naujan, Province of Mindoro*,<sup>19</sup> as discussed in Justice Arturo D. Brion's Dissenting Opinion,<sup>20</sup> and as allegedly reiterated in *San Buenaventura v. Municipality of San Jose*,

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<sup>13</sup> *Id.* at 557-590.

<sup>14</sup> *Id.* at 848.

<sup>15</sup> *Id.* at 850.

<sup>16</sup> *Id.* at 851-853.

<sup>17</sup> *Id.* at 854-857.

<sup>18</sup> *Id.* at 858.

<sup>19</sup> 107 Phil. 118 (1960).

<sup>20</sup> *Rollo* (G.R. No. 201413), pp. 639-672.

*Camarines Sur, et al.*,<sup>21</sup> *Guingona et al.* points out that an extension, however short, of the period of a publicly bid out contract is a substantial amendment that requires public bidding because the period in an OTP is a vital and essential particular to the contract.<sup>22</sup> Movants add that the Court erred in holding that the subject amendment is advantageous to the public as the extended option contract is void and thus can never be said to inure to the benefit of the public.<sup>23</sup> Lastly, movants claim that the Comelec still has the time to conduct public bidding to procure the items necessary for the 2013 elections and that the needed budget could be provided by Congress.<sup>24</sup>

#### **G.R. No. 201121**

Petitioners humbly submit that the Order of this Honorable Court dismissing the petition by upholding the validity of the extended option to purchase and the constitutionality of the AES Contract implementation is contrary to law and the Constitution.<sup>25</sup>

Movants *S4S, et al.* implore the Court to take a second look at the relevance of the release of the performance security to the subject expired option contract since it did not alter the fact of such expiration.<sup>26</sup> They explain that the Court's conclusion is a dangerous precedent, because it would encourage circumvention of the laws and rules on government contracts since the parties could enter into collusion to defer the release of the performance security for the sole purpose of prolonging the effectivity of the contract.<sup>27</sup> They reiterate their argument that any extension of the option period amounts to a new procurement which must comply with the requirements of bidding under Republic Act (RA) No. 9184<sup>28</sup> and stress that the March 31, 2012 Deed of Sale is not a special transaction which warrants

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<sup>21</sup> 121 Phil. 101 (1965).

<sup>22</sup> *Rollo* (G.R. No. 201413), pp. 860-863.

<sup>23</sup> *Id.* at 864-867.

<sup>24</sup> *Id.* at 868-869.

<sup>25</sup> *Id.* at 895.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 896-897.

<sup>28</sup> *Id.* at 897-898.

any exemption from the mandatory requirements of a public bidding.<sup>29</sup> It is likewise their view that time constraints, budgetary consideration and other advantages in extending the option period are not plausible justifications for non-compliance with the requirements of public bidding.<sup>30</sup> Finally, movants assail the constitutionality of the entire AES Contract and consequently of the option contract because of its failure to provide that the mandatory minimum system capabilities be complied with; and because of the provision on shared responsibility between the Comelec and Smartmatic.<sup>31</sup>

#### **G.R. No. 201413**

- I. THE NON-RELEASE OF THE SECURITY DEPOSIT BY COMELEC INDICATES THE EXISTENCE OF UNFULFILLED OBLIGATIONS BY THE CONTRACTOR, AND THEREFORE, IT IS ABSURD TO CITE THIS UNCURED BREACH BY THE CONTRACTOR TO JUSTIFY THE GRANT OF MORE RIGHTS TO THE SAID CONTRACTOR BY EXTENDING THE EXPIRED OPTION TO PURCHASE WHICH EFFECTIVELY CIRCUMVENTS THE GOVERNMENT PROCUREMENT LAW.
  
- II. THERE IS NO JUSTIFIABLE BASIS TO ACCEPT MERE ARGUMENTS THAT THE PCOS IS CAPABLE OF RUNNING WITH DIGITAL SIGNATURES, SECURE[D] FROM HACKING AND COMPLIANT WITH THE MINIMUM ACCURACY RATE OF 99.995%, WHEN IN ACTUAL PERFORMANCE DURING MAY 2010 [ELECTIONS,] THE PCOS OPERATED WITHOUT DIGITAL SIGNATURES, FOUND VULNERABLE TO HACKING AND FAILED BY THE ACCURACY REQUIREMENT, AS SHOWN BY THE APPLICABLE COMELEC RESOLUTIONS, TWG-RMA REPORT, AUDIT LOGS AND PRINT LOGS.<sup>32</sup>

Movants Tan Dem, *et al.* convey their view on the absurdity of the Court's decision in justifying the resurrection of the dead OTP with the continuing effectivity of the stipulation on performance security notwithstanding the presumed existence of uncured contractual breach by

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<sup>29</sup> *Id.* at 899.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 901-904.

<sup>32</sup> *Id.* at 946.

the contractor.<sup>33</sup> They also express doubt that the PCOS machines are capable of running with digital signatures compliant with the minimum accuracy rate.<sup>34</sup>

For their part, respondents offer the following comments:

### COMELEC

The Comelec, on the other hand, argues that it validly exercised the OTP because the period for its exercise was amended and accordingly extended to March 31, 2012. It highlights the provision in the AES Contract on the right to amend the contract which the parties did during its effectivity.<sup>35</sup> It does not agree with movants' claim that the parties to the contract intended that the option period be definite.<sup>36</sup> Rather, it maintains that the parties are free to extend the option period in the same way that they can amend the other provisions of the contract.<sup>37</sup> Moreover, the Comelec insists that the extension of the option period is neither a material nor substantial amendment considering that after the extension, the AES Contract taken as a whole still contains substantially the same terms and conditions as the original contract and does not translate to concrete financial advantages to Smartmatic-TIM.<sup>38</sup> It also argues that the extension of the option period could not have affected the bid prices or financial proposals of the bidders since they understood from the RFP that it had no separate price allocation.<sup>39</sup> It emphasizes that a longer period was not a benefit but a burden to the bidders such that they would not have submitted a lower but in fact a higher bid because they would have to give up the opportunity to lease or sell the PCOS machines to third parties and it would

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<sup>33</sup> *Id.* at 947-948.

<sup>34</sup> *Id.* at 948.

<sup>35</sup> *Id.* at 975-978.

<sup>36</sup> *Id.* at 980-981.

<sup>37</sup> *Id.* at 982.

<sup>38</sup> *Id.* at 982-987.

<sup>39</sup> *Id.* at 991.



also result in higher costs in warehousing and security.<sup>40</sup> The Comelec also opines that *San Diego* and *San Buenaventura*, cited by movants, are not applicable because they involve alterations of the essential terms and conditions of the main contract to the disadvantage of the government unlike this case where there is an alteration only with respect to the ancillary provision of the AES Contract and for the benefit of the Comelec.<sup>41</sup> The Comelec reiterates that the extension of the option period is advantageous to it and burdensome for Smartmatic-TIM.<sup>42</sup> Lastly, it posits that the exercise of the OTP was the more prudent choice for the Comelec taking into consideration the budget and time constraints.<sup>43</sup>

#### SMARTMATIC-TIM

Smartmatic-TIM contends that the OTP is only an ancillary provision in the subsisting AES Contract which has already satisfied the public bidding requirements.<sup>44</sup> It disagrees with petitioners that the extension of the option period was unilateral and claims instead that it was mutual as the parties in fact executed an agreement on the extension.<sup>45</sup> Assuming that the option period had already expired, the extension is not a substantial or material amendment since it only pertains to a residual component of the AES Contract.<sup>46</sup> It also echoes the Comelec's argument that the *San Diego* and *San Buenaventura* cases are not applicable to the present case because of the difference in factual circumstances.<sup>47</sup> Moreover, it reiterates its claim that the extension is favorable to the Comelec and does not prejudice the other bidders.<sup>48</sup> Smartmatic-TIM explains that the retention of the performance security is due to its residual continuing obligations to maintain

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<sup>40</sup> *Id.* at 993.

<sup>41</sup> *Id.* at 998.

<sup>42</sup> *Id.* at 999-1002.

<sup>43</sup> *Id.* at 1003-1008.

<sup>44</sup> *Id.* at 1018.

<sup>45</sup> *Id.* at 1025.

<sup>46</sup> *Id.* at 1026-1027.

<sup>47</sup> *Id.* at 1028.

<sup>48</sup> *Id.* at 1030.

the PCOS machines and update the software in anticipation of their possible use for elections after 2010, and not due to the existence of unfulfilled obligations as provided in the AES Contract.<sup>49</sup> It likewise points out that the alleged flaws and deficiencies of the PCOS machines do not affect its compliance with the requirements of RA 9369.<sup>50</sup> It emphasizes that the use of digital signatures and their availability for use in future elections have been adequately established.<sup>51</sup> It also defends PCOS machines' compliance with the minimum requirements under RA 9369 as found by the Court in *Roque v. Comelec*.<sup>52</sup> As to the alleged glitches, Smartmatic-TIM claims that they are not attributable to any inherent defect in the PCOS machines and, in any case, enhancements have already been made.<sup>53</sup> Lastly, Smartmatic-TIM stresses that the arguments challenging the validity and constitutionality of the AES Contract and the performance by the Comelec of its mandate have already been rejected with finality by the Court in *Roque v. Comelec*.<sup>54</sup>

We find no reason to disturb our June 13, 2012 Decision.

Clearly, under the AES Contract, the Comelec was given until December 31, 2010 within which to exercise the OTP the subject goods listed therein including the PCOS machines. The option was, however, not exercised within said period. But the parties later entered into an extension agreement giving the Comelec until March 31, 2012 within which to exercise it. With the extension of the period, the Comelec validly exercised the option and eventually entered into a contract of sale of the subject goods. The extension of the option period, the subsequent exercise thereof, and the eventual execution of the Deed of Sale became the subjects of the petitions

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<sup>49</sup> *Id.* at 1033.

<sup>50</sup> *Id.* at 1034.

<sup>51</sup> *Id.* at 1036.

<sup>52</sup> *Id.* at 1042.

<sup>53</sup> *Id.* at 1045-1049.

<sup>54</sup> *Id.* at 1050.

challenging their validity in light of the contractual stipulations of respondents and the provisions of RA 9184.

In our June 13, 2012 Decision, we decided in favor of respondents and placed a stamp of validity on the assailed resolutions and transactions entered into. Based on the AES Contract, we sustained the parties' right to amend the same by extending the option period. Considering that the performance security had not been released to Smartmatic-TIM, the contract was still effective which can still be amended by the mutual agreement of the parties, such amendment being reduced in writing. To be sure, the option contract is embodied in the AES Contract whereby the Comelec was given the right to decide whether or not to buy the subject goods listed therein under the terms and conditions also agreed upon by the parties. As we simply held in the assailed decision:

While the contract indeed specifically required the Comelec to notify Smartmatic-TIM of its OTP the subject goods until December 31, 2010, a reading of the other provisions of the AES contract would show that the parties are given the right to amend the contract which may include the period within which to exercise the option. There is, likewise, no prohibition on the extension of the period, provided that the contract is still effective.<sup>55</sup>

In interpreting Article 2.2 of the AES Contract, movants claim that the use of the word "surviving" and the phrase "without prejudice" suggests that the warranty provision and the OTP are covered by a different period and not by the term of the AES Contract.<sup>56</sup>

We cannot subscribe to said postulation. Article 2.2 of the AES Contract reads:

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<sup>55</sup> *Id.* at 570-571.

<sup>56</sup> *Id.* at 850.

**Article 2**  
**EFFECTIVITY**

x x x x

*2.2. The Term of this Contract begins from the date of effectivity until the release of the Performance Security, without prejudice to the surviving provisions of this Contract including the warranty provision as prescribed in Article 8.3 and the period of the option to purchase (Emphasis supplied).*

The provision means that the contract takes effect from the date of effectivity until the release of the performance security. Article 8 thereof, on the other hand, states when the performance security is released, to wit:

**Article 8**  
**Performance Security and Warranty**

x x x x

Within seven (7) days from delivery by the PROVIDER to COMELEC of the Over-all Project Management Report after successful conduct of the May 10, 2010 elections, COMELEC shall release to the PROVIDER the above-mentioned Performance Security without need of demand.

The performance security may, therefore, be released before December 31, 2010, the deadline set in the AES Contract within which the Comelec could exercise the option. The moment the performance security is released, the contract would have ceased to exist. However, since it is without prejudice to the surviving provisions of the contract, the warranty provision and the period of the option to purchase survive even after the release of the performance security. While these surviving provisions may have different terms, in no way can we then consider the provision on the OTP separate from the main contract of lease such that it cannot be amended under Article 19.

In this case, the contract is still effective because the performance security has not been released. Thus, not only the option and warranty

provisions survive but the entire contract as well. In light of the contractual provisions, we, therefore, sustain the amendment of the option period.

The amendment of a previously bid contract is not *per se* invalid. For it to be nullified, the amendment must be substantial such that the other bidders were deprived of the terms and opportunities granted to the winning bidder after it won the same and that it is prejudicial to public interest. In our assailed decision, we found the amendment not substantial because no additional right was made available to Smartmatic-TIM that was not previously available to the other bidders; except for the extension of the option period, the exercise of the option was still subject to same terms and conditions such as the purchase price and the warranty provisions; and the amendment is more advantageous to the Comelec and the public.

Movants seek the application of *San Diego*<sup>57</sup> where we nullified the extension of the lease agreement and considered said amendment substantial. We, however, find the case inapplicable. The extension made in *San Diego* pertained to the period of the main contract of lease while in this case, the extension referred not to the main contract of lease of goods and services but to the period within which to exercise the OTP. In extending the original period of lease of five years to another five years without public bidding, the Municipality of Naujan, Province of Mindoro acted in violation of existing law. The period of lease undoubtedly was a vital and essential particular to the contract of lease. In *San Diego*, the Municipality of Naujan was the lessor of its municipal waters and the petitioner, the lessee. An extension of the lease contract would mean that the lessee would be given undue advantage because it would enjoy the lease of the property under the same terms and conditions for a longer period. Moreover, prior to the extension of the lease period, the rentals were reduced upon the request of

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<sup>57</sup> *Supra* note 19.

the lessee. The end result was that the municipality was deprived of income by way of rentals because of the reduced rates and longer period of lease.

In this case, the extension of the option period means that the Comelec had more time to determine the propriety of exercising the option. With the extension, the Comelec could acquire the subject PCOS machines under the same terms and conditions as earlier agreed upon. The end result is that the Comelec acquired the subject PCOS machines with its meager budget and was able to utilize the rentals paid for the 2010 elections as part of the purchase price.

We maintain the view that the extension of the option period is an amendment to the AES Contract authorized by Article 19 thereof. As held in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*:<sup>58</sup>

While we concede that a winning bidder is not precluded from modifying or amending certain provisions of the contract bidden upon, such changes **must not constitute substantial or material amendments that would alter the basic parameters of the contract and would constitute a denial to the other bidders of the opportunity to bid on the same terms.** Hence, the determination of whether or not a modification or amendment of a contract bidden out constitutes a substantial amendment rests on whether the contract, when taken as a whole, would contain substantially different terms and conditions that would have the effect of altering the technical and/or financial proposals previously submitted by other bidders. The alterations and modifications in the contract executed between the government and the winning bidder must be such as to render such executed contract to be **an entirely different contract from the one that was bidden upon.**<sup>59</sup>

It must be pointed out that public biddings are held for the best protection of the public and to give the public the best possible advantages by means of open competition between the bidders, and to change them

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<sup>58</sup> G.R. Nos. 155001, 155547 and 155661, May 5, 2003, 402 SCRA 612; 450 Phil. 744 (2003).

<sup>59</sup> *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, *supra*, at 655-656 (Emphasis in the original)

without complying with the bidding requirement would be against public policy.<sup>60</sup> What are prohibited are modifications or amendments which give the winning bidder an edge or advantage over the other bidders who took part in the bidding, or which make the signed contract unfavorable to the government.<sup>61</sup> In this case, as thoroughly discussed in our June 13, 2012 Decision, the extension of the option period and the eventual purchase of the subject goods resulted in more benefits and advantages to the government and to the public in general.

While movants may have apprehensions on the effect to government contracts of allowing “advantage to the government” as justification for the absence of competitive public bidding, it must be stressed that the same reasoning could only be used under similar circumstances. The “advantage to the government,” time and budget constraints, the application of the rules on valid amendment of government contracts, and the successful conduct of the May 2010 elections are among the factors looked into in arriving at the conclusion that the assailed Resolutions issued by the Comelec and the agreement and deed entered into between the Comelec and Smartmatic-TIM, are valid.

Lastly, we need not further discuss the issues raised by movants on the alleged glitches of the subject PCOS machines, their compliance with the minimum system capabilities required by law, and the supposed abdication of the Comelec’s exclusive power in the conduct of elections as these issues have been either thoroughly discussed in the assailed decision or in the earlier case of *Roque, Jr. v. Commission on Elections*.<sup>62</sup>

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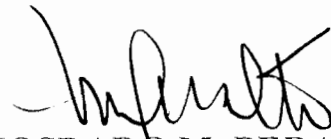
<sup>60</sup> *San Diego v. The Municipality of Naujan, Province of Mindoro*, *supra* note 19, at 124.

<sup>61</sup> *Power Sector Assets and Liabilities Management Corporation v. Pozzolanic Philippines Incorporated*, G.R. No. 183789, August 24, 2011, 656 SCRA 214, 232.

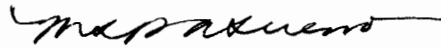
<sup>62</sup> G.R. No. 188456, September 10, 2009, 599 SCRA 69.

**WHEREFORE**, premises considered, the motions for reconsideration are **DENIED** for lack of merit.

**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**



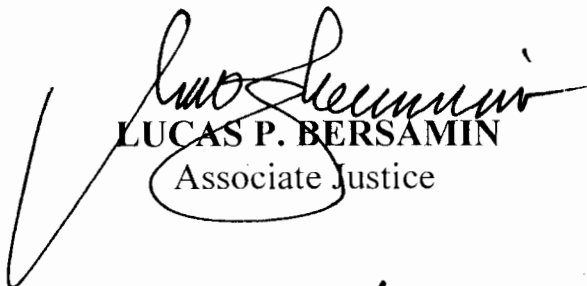
**MARIA LOURDES P. A. SERENO**  
Chief Justice

On official leave  
**ANTONIO T. CARPIO**  
Associate Justice

*(Please see Concurring Opinion)*  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

*Teresito Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*See: Dissenting Opinion*  
*Arturo D. Brion*  
**ARTURO D. BRION**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

On leave  
**MARIANO C. DEL CASTILLO**  
Associate Justice

*Roberto A. Abad*  
**ROBERTO A. ABAD**  
Associate Justice

*I maintain my dissent in the June 13, 2012 decision*  
*Martin S. Villarama, Jr.*  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice



On official leave  
**JOSE PORTUGAL PEREZ**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice

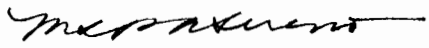


**JOSE CATRAL MENDOZA**  
Associate Justice

*I maintain my dissent to  
the June 13, 2012 Decision  
WLB:herl*  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**MARIA LOURDES P. A. SERENO**  
Chief Justice