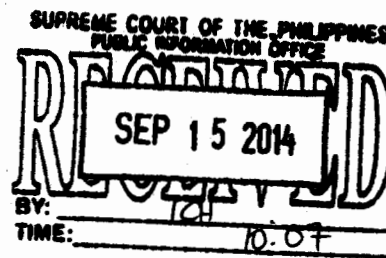




Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated August 18, 2014, which reads as follows:*

“G.R. No. 195055 (Talon Security Consulting and Trade Limited v. Department of National Defense, represented by [former] Secretary Gilberto C. Teodoro, Jr., [former] Undersecretary Antonio L. Romero III, and Department of National Defense –Bids and Awards Committee). – On November 29, 2008, the Department of National Defense’s Bids and Awards Committee (DND-BAC) published an *Invitation to Apply for Eligibility and to Bid* for the procurement of various ammunitions, specifically the 40mm HEDP, 60mm Mortar and 81mm Mortar. After a *Pre-Bid Conference* with prospective bidders, a *Bid Submission and Opening* was scheduled on December 22, 2008, which was subsequently moved to January 5, 2009. On said date, the DND-BAC apprised the bidders on the procedures of the bidding process. The parties who submitted their bids for the 40mm HEDP were petitioner and Dolarian Capital Inc. (*Dolarian*) while for the 60 mm and 81mm Mortars were petitioner, Dolarian and Dynamit Nobel Balkan (*Dynamit*). Only petitioner was declared to have passed the eligibility check, the other two (2) bidders having been disqualified for failure to submit certain requirements. The disqualified bidders filed their respective motions for reconsideration which were eventually denied.<sup>1</sup>

On January 29, 2009, the DND-BAC issued resolutions declaring petitioner as the *Lowest Calculated and Responsive Bidder*. Thereafter, on February 13, 2009, it recommended to the Secretary of National Defense, then Hon. Gilberto C. Teodoro, Jr., the issuance of a *Notice of Award* in favor of petitioner. However, on March 24, 2009, finding that petitioner appeared to have deviated from the established bidding procedures, Undersecretary Antonio L. Romero II (*USEC Romero*), in his capacity as Undersecretary for Finance and Armed Forces Modernization Affairs and pursuant to Section 2 (E) of Administrative Order No. 218, recommended to Secretary Teodoro to identify the lapses that will merit administrative or penal sanctions and the conduct of a rebidding. On March 31, 2009, Secretary Teodoro issued Memorandums directed to the Chairman of the

<sup>1</sup> Rollo, pp. 70-74.

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DND-BAC and Assistant Secretary Roberto Emmanuel Feliciano (*ASEC Feliciano*) declaring a failure of bid and directing the conduct of a rebidding. He noticed the conflicting documents presented by petitioner consisting of a certification that petitioner has not previously done business in the Philippines and a prior completed contract between petitioner and the Armed Forces of the Philippines (*AFP*). On April 24, 2009, petitioner filed a motion for reconsideration. On May 13, 2009, without waiting for the resolution of the motion, petitioner filed a Petition for *Certiorari* with a prayer for the issuance of a temporary restraining order and/or preliminary injunction before the Regional Trial Court (*RTC*) pursuant to Section 58 of R.A. No. 9184 alleging that it had a vested right which was set aside by Secretary Teodoro and sought the intervention of the court to compel him to act in accordance with the valid recommendation of the DND-BAC. Respondents objected to the court's exercise of jurisdiction over the case and emphasized petitioner's lack of legal capacity to sue.<sup>2</sup>

On May 29, 2009, the RTC issued an Order<sup>3</sup> declaring a *status quo ante* and granted the prayer for the issuance of a temporary restraining order enjoining respondents from conducting a rebidding. On June 17, 2009, during the hearing on the application for a writ of preliminary injunction, respondents objected to petitioner's motion to present as witnesses *ASEC Feliciano* and Major General Jerry Jalandoni (*Maj. Gen. Jalandoni*), Chairman and Member, respectively, of the DND-BAC, arguing that petitioner must first serve written interrogatories before they can call adverse parties to testify as hostile witnesses. Consequently, when the written interrogatories were being presented, respondents opposed the same on the ground that the questions therein were immaterial and irrelevant. On June 22, 2009, during the hearing for presentation of evidence, petitioner did not present any witness. On July 14, 2009, petitioner filed an *Urgent Motion for Issuance of Subpoena Duces Tecum and Ad Testificandum* which was set for hearing on July 17, 2009. Before the scheduled hearing, on July 15, 2009, an unnamed officer-in-charge of the RTC issued a *subpoena duces tecum* and *ad testificandum* directing *ASEC Feliciano* and *Maj. Gen. Jalandoni* to testify on the July 17, 2009 hearing. On July 20, 2009, petitioner filed another *Urgent Motion for Issuance of Subpoena Duces Tecum and Ad Testificandum*. Respondents then filed a Motion for Investigation for the court to look into the hastiness upon which the subpoena was issued by the unnamed officer despite the pending motions of the parties. However, on August 4, 2009, without further hearing, the RTC issued an Order<sup>4</sup> granting respondent's application for a writ of preliminary injunction.

Aggrieved, respondents filed a Petition for *Certiorari* with the Court of Appeals (*CA*) challenging the Order of the RTC. On August 27, 2010, the *CA* granted respondent's Petition and further dismissed the Petition pending

<sup>2</sup> *Id.* at 74-79.

<sup>3</sup> See Annex "H" of Petition, *id.* at 258-261.

<sup>4</sup> See Annex "M" of Petition, *id.* at 409-414.

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before the RTC finding no fault in Secretary Teodoro's act of declaring a failure of bid and directing the conduct of a rebidding for having been done within its sound discretion and finding lack of jurisdiction on the part of the RTC as petitioner, an unlicensed foreign corporation doing business in the Philippines, cannot file suits herein.<sup>5</sup>

Petitioner thus assailed the CA Decision in a Petition for Review on *Certiorari* essentially questioning the authority of Secretary Teodoro to declare a failure of bid and direct the conduct of a rebidding, asserting its capacity to sue even in the absence of a license since it is not doing business in the Philippines and maintaining that respondents are estopped to challenge petitioner's legal capacity after having acknowledged the same by entering into a contract with petitioner.

The Petition lacks merit. It is a settled rule that the discretion to accept or reject bid and award contracts is of such wide latitude that the courts will not interfere therewith, unless it is apparent that it is used as a shield to a fraudulent award,<sup>6</sup> an unfairness or injustice is shown, or when in the exercise of its authority, it gravely abuses or exceeds its jurisdiction.<sup>7</sup> Where the invitation to bid contains a reservation for the Government to reject any or all bids, the lowest or highest bidder, as the case may be, is not entitled to an award as a matter of right for it does not become the ministerial duty of the Government to make such award.<sup>8</sup> Thus, as correctly held by the CA,<sup>9</sup> in the absence of any unfairness, injustice, caprice or arbitrariness on the part of Secretary Teodoro, this Court shall refrain from interfering with his decision to declare a failure of bid and direct the conduct of a rebidding.

We further find no error in the decision of the CA dismissing the Petition pending before the RTC finding lack of jurisdiction thereof as petitioner is a foreign business entity not entitled to file or maintain an action in court. As the CA pointed out, petitioner failed miserably to prove with sufficient evidence its corporate existence entitling it certain rights and prerogatives as a juridical entity.<sup>10</sup> Even assuming that petitioner is a legitimately-constituted corporate entity under its national law, it still has not acquired capacity to file suits in the Philippines for failing to secure the necessary license and certificate from the appropriate government agency to do business herein.<sup>11</sup>

<sup>5</sup> See Annex "A" of Petition, *id.* at 69-97.

<sup>6</sup> *National Power Corporation v. Pinatubo Commercial*, G.R. No. 176006, March 26, 2010, 616 SCRA 611.

<sup>7</sup> *First United Constructors Corporation v. Poro Point Management Corporation (PPMC)*, G.R. No. 178799, January 19, 2009, 576 SCRA 311.

<sup>8</sup> *Urbanes, Jr. v. Local Water Utilities Administration*, 531 Phil. 447, 458 (2006), citing Fernandez, Jr., *A treatise on Government Contracts under Philippine Law*, pp. 41-42 (2003).

<sup>9</sup> *Rollo*, pp. 85-86.

<sup>10</sup> *Id.* at 94.

<sup>11</sup> Section 133 of the Corporation Code provides:

Petitioner contends that since it is not doing business in the Philippines, its activities being isolated to participating in the bidding processes of the DND and AFP, it is exempted from the requirement to obtain the necessary license.<sup>12</sup>

We disagree. There is no hard-and-fast rule on what constitutes "doing," "engaging in," or "transacting" business in the Philippines.<sup>13</sup> The question of whether or not a foreign corporation is doing business is dependent principally upon the facts and circumstances of each particular case.<sup>14</sup> Nevertheless, jurisprudence has set certain parameters in holding that the term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object for which the corporation was organized.<sup>15</sup>

In the instant case, it is not disputed by petitioner that it had previously entered into the following government and private contracts in the Philippines: (1) Supply and delivery of Ctg. 81 mm Mortar Ammunition valued at ₱87,773,960.00; (2) Supply and delivery of Ctg. 60 mm Mortar Ammunition valued at ₱47,996,000.00; (3) Supply and delivery of Ctg. 60 mm Mortar Ammunition valued at ₱14,950,000.00; (4) Supply and delivery of Ctg. 81 mm Mortar Ammunition valued at ₱24,750,000.00; (5) Supply and delivery of Ctg. 40 mm Mortar Ammunition valued at ₱11,000,000.00; (6) Supply and delivery of Ctg. 60 mm Mortar Ammunition valued at ₱34,943,000.00; and (7) Supply and delivery of Ctg. 80 mm Mortar Ammunition valued at ₱25,139,569.72.<sup>16</sup>

While we have held that what is determinative of "doing business" is not really the number or the quantity of the transactions,<sup>17</sup> we cannot disregard the fact that petitioner had entered into the numerous business transactions enumerated above in its own name and for its own account. As the records reveal, majority of these transactions have yet to be accomplished. In fact, petitioner has even participated in another bidding process, albeit Secretary Teodoro's order of rebidding, which only exhibits its intent to continue its business of supplying ammunitions in the country. Indeed, we have held that the act of participating in a bidding process

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No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

<sup>12</sup> *Rollo*, p. 25.

<sup>13</sup> *Agilent Technologies Singapore (PTE) Ltd. v. Integrated Silicon Technology Philippines Corporation, et al.*, 471 Phil. 582, 602 (2004).

<sup>14</sup> *MR Holdings, Ltd. v. Sheriff Bajar*, 430 Phil. 443, 461 (2002).

<sup>15</sup> *Id.* at 461-462, citing *Columbia Pictures, Inc., et al. v. Court of Appeals*, 329 Phil. 875 (1996).

<sup>16</sup> *Id.* at 47.

<sup>17</sup> *Lorenzo Shipping Corp. v. Chubb and Sons, Inc. et al.*, G.R. No. 147724, June 8, 2004, 431 SCRA 266, 278, citing *Eriks Pte. Ltd. v. Court of Appeals*, 335 Phil. 229 (1997).

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constitutes "doing business" because it shows the foreign corporation's intention to engage in business in the Philippines.<sup>18</sup> We cannot, therefore, sustain petitioner's contention that it is not engaged in business herein when it had failed to provide sufficient proof that might tend to negate its apparent intention.


Neither can we give credence to petitioner's claim that respondents, by declaring petitioner as the *Lowest Calculated and Responsive Bidder* in the bidding process, cannot now challenge its legal personality on the basis of estoppel. Time and again, we have applied the doctrine of estoppel to prevent a person or entity contracting with a foreign corporation from renegeing on its obligation after it had acknowledged the same by entering into a contract with it.<sup>19</sup> The doctrine, however, is not applicable in this case. As the CA correctly observed, petitioner's participation in the bidding process cannot be said to have ripened into a contract to which the above doctrine may apply.<sup>20</sup> Certainly, the mere recommendation by the DND-BAC to Secretary Teodoro of the issuance of a notice of award in favor of petitioner cannot, by itself, constitute a contract. Hence, since there is no contract to speak of, the doctrine of estoppel is inapplicable herein.

All told, while respondents did not categorically state the dismissal of the Petition pending before the RTC as a specific relief prayed for, we find no fault in the decision of the CA as there is clearly an absence in the lower court's jurisdiction to entertain the suit, petitioner having no legal personality to initiate the same.<sup>21</sup>

**WHEREFORE**, premises considered, the petition is **DENIED** for failure of petitioner to show any reversible error in the assailed CA decision. (**Villarama, Jr., J.**, on official leave; **Brion, J.**, additional member, per Special Order No. 1752 dated August 11, 2014)

**SO ORDERED."**

Very truly yours,

  
**WILFREDO V. LAPITAN**  
Division Clerk of Court  
A 9/9/14

<sup>18</sup> *European Resources and Technologies, Inc. v. Ingenieurburo Birkhahn + Nolte*, 479 Phil. 115, 123 (2004).

<sup>19</sup> *Id.* at 125, citing *Asia Banking Corporation v. Standard Products Co.*, 46 Phil. 144 (1924); *Antam Consolidated v. Court of Appeals*, 227 Phil. 267 (1986); *Merril Lynch Futures v. Court of Appeals*, G.R. No. 97816, July 24, 1992, 211 SCRA 824; *Georg Grotjahn GMBH & Co. v. Isnani*, G.R. No. 109272, August 10, 1994, 235 SCRA 216.

<sup>20</sup> *Rollo*, pp. 133-134.

<sup>21</sup> *Id.* at 96.

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COURT OF APPEALS  
CA G.R. SP No. 111066  
1000 Manila

The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 100, 1100 Quezon City  
(SP. Civil Case No. Q-09-64839)

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