

## CASE STUDY: »CRNAGORAPUT«



**I: INTRODUCTION:** After the expiry of the four-year contract on maintenance of main and regional roads in Montenegro for the period 2010-2014, the Transport Directorate illegally signed annexes to the contract with the contractor, the company "Crnagoraput" from Podgorica. In fact, after failing to timely announce the tender for continuation of works on the

maintenance of road infrastructure for the next four years, with the consent of the Government of Montenegro, the Directorate concluded annexes to the original contract with "Crnagoraput", first in May and then in October 2014, for additional €8.2 million for the total of 10 months. The company offered its services for the amount of €8.8 million for 12 months within the new call for maintenance of state roads in the period 2014-2018, which was a much more favorable price than the one contracted through annexes for two months shorter period.

**II: ILLEGAL ANNEX AFTER DELAYS WITH TENDER:** Transport Directorate of Montenegro signed the Contract on maintenance of 52 main and regional roads in Montenegro with the company "Crnagoraput" from Podgorica for the period from June 2010 until the end of May 2014, for a total value of €39.7 million or €9.9 million per year. In the first year, the value of public works was €9.3 million, in the second year €11.4 million was spent, during the third year it invested €8.8 million for 52 roads, while finally from June 2013 until the end of May 2014, it spent €8.8 million for budgeted amount for road maintenance.<sup>1</sup>

After implementing a four-year deal with the company "Crnagoraput" from Podgorica, the Transport Directorate was supposed to announce a new tender for contracting a new four-year contract for road maintenance, which was reduced to five sections after analyzing the previous work, namely Kotor, Podgorica, Niksic, Berane and Pljevlja.<sup>2</sup> However, in April 2014, two months before the expiration of the four-year contract with "Crnagoraput", the Ministry of Transport, i.e. the Transport Directorate did not even announce the tender, but instead, it addressed the Government of Montenegro with a request for their consent to signing the annex to the original contract with the former contractor, which would conduct works in the following four months, or for as long as it was estimated that the preparation of a new tender procedure for selection of the new contractor for the new four-year term would last.

Zbog ne blagovremenog raspisivanja tenderske procedure i nemogućnosti zaključivanja novog Ugovora Ministarstvo saobraćaja i pomorstva – Direkcija za saobraćaj je dana 30.05.2014.godine, a na osnovu saglasnosti Vlade, sklopila Aneks IV ugovora kojim je postojeći Ugovor produžen na period od 4 (četiri) mjeseca odnosno od 1.06.2014. godine do 30.09.2014. godine, na vrijednost od 3.313.091,00 €  
Dana 27.05.2014. godine raspisan je novi poziv za redovno održavanje regionalnih i

*Information about the necessity for conclusion of the Annex IV*

<sup>1</sup> Information about the necessity for conclusion of the Annex IV to the Contract on maintenance of the main and regional roads in Montenegro.

<sup>2</sup> Information about the re-categorization of section of state roads.

The Government gave approval for signing the annex to the original contract within the same month<sup>3</sup>, while the Minister of Transport and Maritime Affairs Ivan Brajovic concluded the annex to the contract<sup>4</sup> in the amount of €3.3 million with "Crnogoraput" a month later, although a better price for the same job could have been achieved if a tender procedure had been carried out on time. In addition, a four-year contract was concluded on the basis of the Law on Public Procurement, but the annex was completely illegally signed by referring to the other law, i.e. the Law on Roads.<sup>5</sup>

**III: A NEW TENDER BY FAVORABLE CRITERIA FOR BIDDERS:** Transport Directorate published a new call for public procurement for maintenance of regional roads for five sections for a new four-year period on 27 May 2014. Estimated value of the procurement for all five parties was €38 million or €7.6 million per each party.<sup>6</sup>

It is interesting that the economic and financial criteria for participation in the public tendering under this announcement were considerably lowered in comparison to criteria that had been required in the previous call in February 2010 for the same type of work.<sup>7</sup> Thus, in 2010, all bidders were required to provide a proof that in the previous three years they had had an average annual turnover of at least €5 million, while according to the new call, they were required to have an average annual turnover for the last two years of at least €2 million.

privredno društvo registrovano kasnije za period od registracije,  
(h) dokaz da je prosječni godišnji obrt za posljednje tri godine najmanje 5 000 000 €,  
(i) iskustvo u najmanje tri projekta slična po obimu i kompleksnosti u posljednje 3 godi

*Public announcement from 15 February 2010*

1. da prosječni godišnji obrt za posljednje dvije godine nije manji od 2 miliona eura - izvještajem o računovodstvenom i finansijskom stanju-bilans uspjeha i bilans stanja sa izvještajem ovlaštenog revizora u skladu sa zakonom kojim se uređuje računovodstvo i revizija, najviše za posljednje dvije godine, odnosno za period od registracije;

*Public announcement from 27 May 2014*

Additionally, after the previous call in February 2010, as a condition for participation in the public tender, bidders were required to submit a certificate that they were not bankrupted or undergoing liquidation, as well as a proof that the bidder had access to the financial resources of at least €3 million per year, in order to ensure the implementation of works. However, according to a new call from May 2014, such eligibility evidence of the bidders were not required. Thus, the funds for payments from the bidder were not provided if the works were not completed within the agreed period, which is completely unacceptable, because it is a public contract worth €38 million, for which it is economically justified to require evidence of financial capacity.

#### **IV: TENDER CANCELLED AND NEW ILLEGAL ANNEX:**

<sup>3</sup> Conclusion of the Government of Montenegro no. 08-1308/4 from 5 June 2014.

<sup>4</sup> Proposal of the Annex IV of the Agreement No. 04/10 concluded between the Ministry of Transport and Maritime Affairs (Transport Directorate) and "Crnogoraput" AD Podgorica.

<sup>5</sup> Article 37, paragraph 5 of the Law on Roads provides that unless there is a conclusion of a new contract, the competent authority must provide temporary financing of works on maintenance of state roads in the amount of resources spent in the last quarter of the previous year, until the conclusion of the contract for the current year.

<sup>6</sup> Announcement no. 01/14 to Open public procurement procedure from 27 May 2014.

<sup>7</sup> Announcement no. 04/10 to Open public procurement procedure for selection of the most favorable bid for works on maintenance of main and regional roads in Montenegro for the period 2010-2014 from 15 February 2010.

Three bids were submitted on the call for maintenance of state roads for the period 2014-2018, but only the offer from "Crnogoraput" from Podgorica included all sections. The offer was €35.2 million or €6.8 million for the first party, €7.5 million for the second party, €6.9 million for the third party, €7.3 million for the fourth and €6.4 million for the fifth party, with the deadline of 48 months for completion of works for each party.

In August 2014, the Commission for evaluation and opening of bids adopted the decision on awarding the job for the next four years for all five parties to the earlier contractor, "Crnogoraput".<sup>8</sup> At the same time, the company "Tehnoput-MNE" from Podgorica also submitted the offer for the first party, but the Commission assessed the offer as invalid, on the grounds that the part of the documentation submitted was not signed and unverified, and concluded that in that way it had not demonstrated the will to participate in the tender.<sup>9</sup> "Tehnoput-MNE" submitted an appeal against such decision to the Commission for the Control of Public Procurement Procedures, which was adopted in mid-September 2014. Thus, the procurement tender was cancelled in its entirety.

S obzirom na ove okolnosti nije izabran novi izvođač na poslovima redovnog održavanja pa je potrebno zaključiti novi Aneks ugovora sa dosadašnjim izvođačem kako bi se nastavio kontinuitet u održavanju regionalnih i magistralnih puteva, što je neophodno kako zbog prohodnosti puteva tako i bezbjednosti saobraćaja.

Kako se mora pokrenuti novi javni poziv za čiju realizaciju je potreban period od najmanje 4 (četiri) mjeseca, a isto tako nije uputno uvoditi eventualno novog izvođača u poslove redovnog održavanja u sred zime, jer zimsko održavanje puteva zahtijeva kompleksne pripreme i ulaganja, smatramo da je potrebno zaključiti novi Aneks ugovora na period od najmanje 6 (šest) mjeseci tj. od 1.10.2014. godine do 31.03.2015. godine.

Naime, zbog obaveze da izvođač...

*Information about the necessity for conclusion of the Annex V*

Due to cancellation of the tender, the Transport Directorate again requested the consent from the Government of Montenegro to sign another annex to the contract<sup>10</sup> with "Crnogoraput" for the period of six months, i.e. for the period from the 1 October 2014 to 31 March 2015.<sup>11</sup> The Transport Directorate stated that at least four months were necessary for completion of the tender procedure, but they proposed six months, because it was not advisable to introduce a new contractor into business during winter, due to the complexity of works on road maintenance. The Government gave a consent at the beginning of October 2014 and the new annex to the original contract in the amount of €4.9 million was signed.<sup>12</sup>

<b>Duration of works:</b>	<b>12 months</b>	<b>10 months</b>
<b>Monthly amount:</b>	<b>733,477</b>	<b>828,272</b>
<b>Total amount:</b>	<b>8,801,732</b>	<b>8,282,727</b>

Thus, the contracted value of works under two annexes to contracts that are concluded with "Crnogoraput" from Podgorica for only 10 months amounted to €8.2 million or €828.000 a month. The same company offered a much lower price for the maintenance of state roads within the call in May 2014, offering the amount of €8.8 million a year or €733,000 a month. That way, due to

<sup>8</sup> Decisions on the most favorable bids no. 01-6121/1 from 11 August 2014, no. 01-6122/1 from 11 August 2014, no. 01-6123/1 from 11 August 2014, no. 01-6124/1 from 11 August 2014, no. 01-6125/1 from 11 August 2014.

<sup>9</sup> In relation to the fifth party, the company "Mehanizacija i programati" AD Niksic submitted the offer in the amount of 7,098,696.05 EUR.

<sup>10</sup> Annex V to the Contract no. 04/10 concluded between the Ministry of Transport and Maritime Affairs (Transport Directorate) and „Crnogoraput“ AD podgorica from 30 September 2014.

<sup>11</sup> Information about the necessity for conclusion of the Annex V to the Contract on maintenance of main and regional roads in Montenegro for the period 2010-2014.

<sup>12</sup> Conclusion of the Government of Montenegro no. 08-2260/4 from 2 October 2014.

untimely tender implementation, the state budget was damaged by at least the amount of the difference between the price agreed through the annexes to the original contract and the offer of "Crnagoraput" under the call from May 2014.

Consequently, MANS filed criminal charges against Ivan Brajovic, the Minister of Transport and Maritime Affairs, as the person responsible in this case.<sup>13</sup>

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<sup>13</sup> NGO "MANS" filed criminal charges to the Supreme State Prosecutor of Montenegro against the Minister of Transport and Maritime Affairs Ivan Brajovic on 25 December 2014.