



SECRET MONEY PATHS

Report on the construction of Bar-Boljare Highway

October 2018



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Abstract

Construction of the first section of Bar-Boljare highway is the largest and most expensive infrastructure project in Montenegro. The project was agreed for €809 million i.e. 19.7 million per kilometre, but the final price depends on additional works and changes in the currency exchange rate of the Euro and the US dollar, as the loan for financing was contracted in dollars.

Costs of construction of the first section will be 20-35% higher than agreed, provided that there are no additional works besides Smokovac interchange. This means that the price of this section can be over € 1 billion, i.e. 25 million per kilometre of the highway.

Costs of managing the construction of this section amount to **at least €15 million**, and it is not known how much it will grow due to delay of works.

The first section of the highway is being built by the Chinese company China Road and Bridge Corporation, and by mid-2018 it entrusted **subcontractors** with works worth around **€400 million**, which is half of agreed price of works. This amount was divided by six subcontractors, while by far the largest part got the local company "**Bemax**", which agreed works worth as much as **one-third of the total price** of this section of the highway.

The contractors of works on the highway have received numerous **subsidies**, and since the start of the construction, the Chinese company has been exempted from payment of a fee of **at least €112 million**.

The project for the construction of the first section is being carried out under the veil of secret, because the Government has previously designated key documents as secret. **State secrets include the most important data** on finances, all control reports and deadlines for implementation of works, as well as criteria according to which subsequent and unforeseen works are estimated. Only a small part of information on subsidies is available to the public, and some institutions published information at the beginning of the construction of the highway, but later they declared it secret.

Despite court verdicts, institutions are persisting in hiding data, so **public control is virtually impossible, which creates space for spreading of corruption**.



Introduction

Bar-Boljare highway construction project is the largest infrastructure project in Montenegro and should connect the south and north of the country to the border with Serbia, and will continue on to the network of regional roads in the neighborhood. Project implementation is planned through three phases, during which three sections of the highway will be built.

On behalf of the Government of Montenegro, the Ministry of Transport signed the Contract on design and construction of the first section of the highway from Smokovac to Mateševo with the Chinese company China Road and Bridge Corporation (CRBC), as a contractor (1). Contract for 41km long section was signed in February 2014, and its value is 809 million Euros (2). According to the contract, Chinese company is obliged to hire Montenegrin subcontractors for works in the scope of at least 30% of the contract value. Works on the highway officially began in May 2015, and the deadline for completion is four years.

Construction of this section of the highway is financed by a loan from the Chinese EXIM Bank, which has been contracted in the main amount of less than US \$ 944 million (3). The loan agreement was signed by the Ministry of Finance in October 2014 (4). This agreement was approved through a special programme of the Chinese Government, which is allocated for the countries of Central and Eastern Europe (5). The conclusion of the contract was preceded by negotiations that were closed to the public.

The project for the construction of the first section was approved by the Parliament of Montenegro, which adopted a special Law on the Bar-Boljare Highway(6) and envisaged a series of subsidies during its implementation. Thus, the State of Montenegro renounced the income from the collection of duties and value added tax for construction materials, equipment and facilities used for the construction of the highway section, as well as taxes and contributions to the earnings of foreign nationals who will be engaged in the Project. In addition, the state gave up the fees for exploitation of stones, while excise taxes on motor fuel for this project have been significantly reduced.

The first chapter of this report shows the basic elements of the contract with CRBC and the control system. Second chapter is devoted to the price of work, the value of subcontracting works and state subsidies. The last part outlines what the Government has declared as classified information in this Project.

[1]Contract on Design and Construction of the Bar-Boljare highway, section: Smokovac-Uvač-Mateševo, concluded on 26 February 2014 between the Government of Montenegro and the Chinese company China Road and Bridge Corporation, which is the contractor, while its parent company China Communications Construction Company is stated in the Contract as the main contractor, with which the Framework Agreement on the implementation of the entire Project has been concluded; the signatory of the Agreement on behalf of the Government was the then Minister of Transport Ivan Brajović, and on behalf of the Chinese company Vice President Du Fei

[2]The exact amount is €809.577.356,14

[3]The exact amount is 943.991.500 US Dollars

[4] Contract on the preferential loan for the buyer for Project for the Construction of the Bar-Boljare Highway, Smokovac-Mateševo section, concluded on October 30, 2014 between the Government of Montenegro, as a borrower, represented by the Ministry of Finance, and Export Import Bank of China as a creditor; the signatory of the Agreement on behalf of the Government was then Minister of Finance Radoje Žugić, and on behalf of the Chinese Bank Vice President Li Ruogu

[5] In April 2012, in Warsaw, Poland, a summit of China and the majority of Central and Eastern European countries was held, where China presented the "Program of 12 Measures for Promoting Friendly Cooperation between the People's Republic of China and Central and Eastern European Countries", and with this Program, the official Beijing announced its readiness to fund various infrastructure projects in Central and Eastern Europe, in the total amount of \$ 10 billion; European countries could apply for certain loans with Chinese EXIM Bank for the amount of 85% of the funds needed for the project implementation, while remaining 15% had to be provided by themselves; However, the loan with EXIM Bank was conditioned by the fact that the main contractors of infrastructure projects in European countries are Chinese companies: the source of these data is Information of the Government of Montenegro on activities related to the implementation of the "Program 12 of Measures for Promoting Friendly Cooperation between the People's Republic of China and Central and Eastern European Countries" as of July 19, 2012

[6] Law on the Highway (Official Gazette of Montenegro 52/14)



Contract

Basic information on the Contract

The contract on the design and construction of the Smokovac-Matešev section was concluded on the basis of the so-called Yellow Book of FIDIC rules (7), which is one of several standard international agreements on construction. This means that the agreed price is lump sum and is paid according to the contracted dynamics, and not on the basis of the works carried out.

The Chinese company CRBC, under the contract, committed itself to the preparation of the Main Project, the construction, procurement and installation of equipment and facilities for the Smokovac-Matešev section, approximately 41 kilometers long. **The section of the highway will have 20 bridges, 16 tunnels and 4 loops.**

The maximum guaranteed price of the Agreement is 809 million Euros (8), which means that the cost of the kilometer of the highway is contracted to **19.7 million Euros.** The deadline for carrying out the works is four years from the date of their start, which was announced in May 2015 (9).

The government has agreed with the Chinese partner that the **domestic subcontractors will get jobs on the Project of at least 30 % of the contract price.**

In accordance with FIDIC rules, in case of a dispute, a special **Dispute Settlement Commission (10)** would first be appointed, but unless an agreement is reached before it, **arbitration will be arranged before the Arbitration Court of the Chamber of Commerce in Zurich.**

The construction of the Smokovac-Matešev section is implemented on the basis of the Main Project, which was prepared by CRBC, and the conceptual design was used as the basis, provided by the Montenegrin Government (11).

[7]<http://www.fidic.org>. FIDIC rules were established by the International Federation of Consulting Engineers, founded by France, Belgium and Switzerland, and a large number of engineering associations around the world are part of this Federation. In 1999, the International Federation established four books of FIDIC rules with general contracting conditions for construction projects. These are the Green Book, which includes the short forms of the contract, the Red Book for Works according to the contractor's project, the Yellow Book referring to design and construction contracts, and the Silver Book, which contains the general requirements for construction under the turnkey system.

[8]The price of the works carried out is paid in Euros according to the Reuters average exchange rate vs. the US dollar, which was established on the day of signing the Contract on Design and Construction, on February 26, 2014. On that day, the Euro and the Dollar ratio was: 1 Euro = 1.3718 US Dollars.

[9]<http://www.minsaob.gov.me/vijesti/148913/konferencija-za-medije-povodom-zvanicnog-pocetka-realizacije-projekta-izgradnje-autoputa.html>

[10]This Commission would consist of three members, agreed by the Government as the investor and China Road and Bridge Corporation as the contractor, and if there is no response, then it is appointed by the FIDIC President or a person appointed by him

[11]The contents of both the Main Project and the Conceptual Design are not known to the Montenegrin public



Contract

Controversial clauses of the contract

Contracting parties which conclude contracts according to FIDIC terms **may modify certain clauses, exclude their implementation or add completely new terms**, depending on their interests and the specific business they agree upon. This was precisely the case with the Agreement agreed between the Government and CRBC.

Exemption from paying taxes to the state

Montenegrin Government contracted a special clause which stipulates **that the Chinese partner will be entitled to an exemption from paying taxes and fees [12].** In this way, the decision of the Parliament of Montenegro, which adopted the Law on the Highway, was prejudiced and enabled benefits to CRBC only nine months after the signing of the contract.

TAX EXEMPTIONS	
1.	Value Added Tax
2.	Customs for the import of construction materials, equipment and facilities intended for the Project
3.	Income tax of foreign employees
4.	Income tax of the contractor
5.	Social security contributions of foreign employees
7.	Charges for exploitation of quarries
8.	Excise on motor fuel € 169 euros per 1,000 liters

Table 1: List of tax exemptions for Bar Boljare Highway Project, section Smokovac-Mateševo; Source: FIDIC contract

Additional works and price increases

The maximum contract price is €809 million, but the clause of the Contracts "**Unpredictable, unforeseen and subsequent works**" opens up space to significantly increase this price [13]. The clause stipulates that:

- **UNPREDICTABLE works are related to changes in geological, hydrological and ecological conditions,**
- **SUBSEQUENT works are not covered by the Main Project, but the Government requires that they be carried out , and**
- **UNFORESEEN works are not covered by the Main Project, and must be carried out in order for the Project to be put to its designated use.**

The contract stipulates that it is possible to increase the price by 10% on the basis of these first two categories, that is, unpredictable and subsequent works, but there is no defined limit of increase for unforeseen works.

CATEGORY	DESCRIPTION	ALLOWED CORRECTION
„Unpredictable“ works	Change in geological, hydrological and ecological conditions	€80 million
„Subsequent“ works	Not according to the Main Project, but required by the Government	
„Nepredvideni“ radovi	Not according to the Main Project, but they must be carried out in order for the Project to be put to its designated use.	?

Table 2: Three types of additional works under FIDIC contract; Source: FIDIC contract

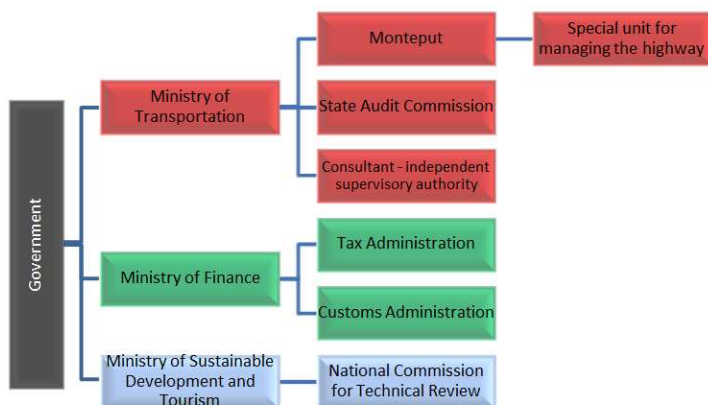
[12] Clause 1.15 of the Contract on Design and Construction of the Bar-Boljare Highway, section: Smokovac-Uvač-Mateševo, concluded under the General Conditions of FIDIC Yellow Book on February 26, 2014

[13] Clause 13.9 of the Contract on Design and Construction of the Bar-Boljare Highway, section: Smokovac-Uvač-Mateševo, concluded under the General Conditions of FIDIC Yellow Book on February 26, 2014



Management

Three Ministries and a number of other institutions are in charge of controlling the implementation of the Highway Project. The key is the Ministry of Transport, as well as state-owned company "Monteput", to which the Government has given special authorities to manage this project, and which has formed a special unit for this purpose [14].



Supervision of the Bar-Boljare Highway Project, Section Smokovac-Mateševu

The government has also established **two expert commissions in charge of the audit of technical documentation and technical inspection of works** [15], composed of 51 domestic experts or representatives of institutions. These commissions report to the Ministry of Transport and the Ministry of Sustainable Development and Tourism.

FIDIC rules stipulate the appointment of an independent Supervisory Body-Engineer who will, on behalf of the Investor, control the work of the Contractor, consisting of engineers of appropriate profiles and other professionals who are qualified to perform such duties [16]. **The government selected the French-Italian consortium Ingerop Conseil & Ingenierie - Geodata Engineering for the Engineer** [17]. This consortium has formed the company "Ingerop MN" [18] in Montenegro, paid by the Government to supervise the Project for construction of the highway section.

The Ministry of Finance is a signatory to the loan agreement with the Chinese EXIM Bank and implements the realization of this loan arrangement, i.e. provides orders for payment of obligations based on installments and commissions. In addition, it transfers funds from the Treasury to the Ministry of Transport, which continues to make payments based on the implementation of the entire Project [19]. The Tax Administration and the Customs Administration are in charge of tax and customs exemptions, as well as the refund of fuel excise duties [20].

[14]Contract on the execution of the project management of the construction of the Bar-Boljare highway, Smokovac-Mateševu section number 01-6099/ of 12 November 2014, concluded between the then Minister of Transport and Maritime Affairs Ivan Brajović and the then Executive Director of "Monteput" Podgorica Osman Nurković, who is now the Minister of Transport

[15]State Commission for Auditing of Technical Documentation, which has 24 members (Official Gazette of Montenegro 20/15) and the State Commission for Technical Audit of Works, which has 27 members (Official Gazette of Montenegro 30/15 and 44/17)

[16]Clauses 3.1., 3.2., 3.3., 3.4., 3.5., 3.6. of the Agreement on design and construction of the Bar-Boljare highway, section: Smokovac-Uvac-Mateševu, concluded on 26 February 2014

[17]<https://monteput.me/autoput-bar-boljare/>

[18]<http://www.pretraga.crps.me:8083/Home/PrikaziSlog/1>

[19] Payments are primarily related to CRBC, Project Engineer - company "Ingerop MN" Podgorica, as well as two state commissions that perform technical supervision of works and audit of technical documentation

[20] These exemptions are defined in more detail in the Rule Book on the procedure for exemption from payment of tax and customs duties for the construction of the Bar-Boljare highway (Sl.list 03/15, 13/15, 31/15, 37/16)



Finance

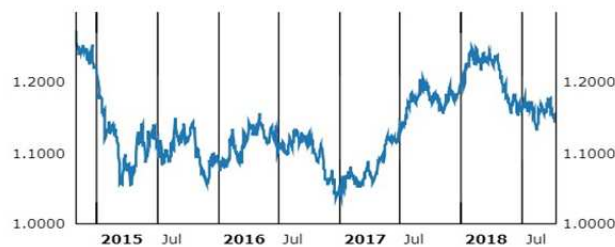
The construction costs for Smokovac Mateševo section will be at least one fifth higher than the agreed ones, and they can also grow by a third of the project's initial value, provided that there are no additional works besides Interchange Smokovac.

The costs of managing the construction of this section amount to at least €15 million, and it is not known how much it will grow due to delays.

Value of the loan depends on the strength of the dollar

Loan for the construction of the first section of the highway is concluded in dollars, and its value depends on the strength of that currency. The government signed the loan with Chinese EXIM Bank in the amount of 944 million dollars and estimated that, due to currency and other risks, the loan price could be up to 10 % higher [21].

When it was concluded at the end of October 2014, the loan in Euro amounted to around 750 million [22]. The value of the Euro compared to the dollar in the past five years has generally fallen, i.e. the dollar has been strengthening, as shown in the following chart.



Euro and dollar exchange rate for the period October 30, 2014 - October 12, 2018 (Source: European Central Bank²³)

As a result, the loan became more expensive, so at the end of 2016, value of the Euro was record low and the loan price rose to as much as €906 million or €156 million more than it was agreed.

In the meantime, the Euro strengthened again, so in mid-October 2018 the loan value was around €815 million or 65 million more than on the day of the signing [24].

Value of the loan	Amount (in mill. €)	Increase (in mill. €)
On the day of the signing	750	-
By the end of 2016	906	156
October 2018	815	65

Table 3: Growth of the Chinese loan

[21]Article on CDM Portal of December 25, 2017 under the title "Pada dolar, padaju i dugovi za autoput",

link: <https://www.cdm.me/ekonomija/ne-diratii-auto%C2%ADput-bi-mogao-biti-sku%C2%ADplji/>

[22]On 30 October 2014, when the loan agreement with Exim Bank was concluded, accrdng to the exchange rate of the European Central Bank, the Euro was on average 1.2598;

link: <https://www.ecb.europa.eu/stats/exchange/eurofxref/shared/pdf/2014/10/20141030.pdf>

[23]http://sdw.ecb.europa.eu/quickview.do?SERIES_KEY=120.EXR.D.USD.EUR.SP00.A&start=30-10-2014&end=13-10-2018&submitOptions.x=0&submitOptions.y=0&trans=WF

[24]On October 12, 2018, the Euro amounted to \$ 1.1574, according to the European Central Bank;

link: https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html



Finance

Additional works

For three years, the government was hiding that it "forgot" to negotiate the necessary works of multi-million dollar value. At the end of 2017, Montenegrin public learned that there was a dispute over additional works between the Government and CRBC, which were not agreed in the main project for Smokovac-Mateševo [25] section, and the construction of Smokovac interchange, which is the entrance to the planned section, was especially emphasized.

Half a year later, the Government submitted to MANS information on the implementation of the Highway Project from May 2016, hidden from the public for two years [26].


INTERNO

2.	19.11.2015.	osnov i sastavni dio Ugovora - Prilog 2
		Potraživanje 002 zato što je tokom izvođenja pripremnih radova Izvođač u oblasti zaštite životne sredine u produženom trajanju postupao suprotno Ugovoru, Zakonu o procjeni uticaja na životnu sredinu i Uredbi o projektima za koje se vrši procjena uticaja na životnu sredinu
3.	19.11.2015.	Potraživanje 003 zbog toga što Izvođač u oblasti zaštite i zdravlja na radu u kontinuitetu ne postupa u skladu sa Ugovorom i Zakonom o zaštiti i zdravlju na radu
4.	24.12.2015.	Potraživanje 004 zbog toga što Izvođač u oblasti zaštite od požara, eksplozija i havarija u kontinuitetu ne postupa u skladu sa Ugovorom i Zakonom o zaštiti i zdravlju na radu, Zakonom o zaštiti i spašavanju i Zakonom o uređenju prostora i izgradnji objekata
5.	24.12.2015.	Potraživanje 005 zbog toga što Izvođač povređuje prava privatne svojine neovlašćenim ulaskom u posjed i izvođenjem radova bez odobrenih projekata ekaprorijacije i prethodno sprovedenih pravnih procedura u vezi sa ekaprorijacijom, čime Izvođač na ovaj način direktno prouzrokuje ili može usloviti nepotrebne i neopravdane troškove za Investitora, odlaganje ili usporavanje radova, i generalno ima negativan uticaj na pravni status i poslovni ugled Investitora u postupku rješavanja imovinsko – pravnih odnosa

U Tabeli 8 dat je pregled obavještenja o pokretanju sporova.

Tabela 8: Pregled obavještenja o pokretanju sporova

IZVOĐAČ RADOVA	1.	29.10.2015.	Projektovanje 4 dodatne stavke: - Petlja Smokovac; - Regionalni put od naselja Veruša do ukrštanja sa autoputom (denivelisana raskrsnica Veruša) u ukupnoj dužini od 5 km; - Rekonstrukcija postojećeg lokalnog puta od petlje Mateševo do puta Mateševo - Kolašin, u dužini od oko 1,4 km; - Snažbljevanje vodom autoputa Bar-Boljaře, dionica Smokovac-Uvač-Mateševo.
	2.	31.10.2015.	Troškovi izgradnje kanala cijevi za sistem vodosnabdjevanja
	3.	17.11.2015.	Izmještanje nadzemnih dalekovoda visokih napona

For three years, the Government has been hiding disputes with Chinese CRBC on additional work; Source: Government information

From this document, it is obvious that the disputes between the Government and Chinese company began at the end of 2015, but they were kept secret. CRBC has initiated disputes because the contract did not include the construction of Smokovac interchange, regional roads on Veruša and Mateševo, as well as the construction of water supply and electric power grid on the highway.

[25] Article on Portal Vijesti of September 29, 2017, under the title "Zaboravljena petlja koštaće nas još 30 miliona"; link: <http://www.vijesti.me/vijesti/zaboravljena-petlja-kostace-nas-jos-30-miliona-956489>

[26] Information on the activities related to implementation of Bar-Boljaře Highway Project, Smokovac-Uvač-Mateševo section, discussed by the Government of Montenegro at a session held on May 12, 2016, received by MANS on the basis of the Law on Free Access to Information, MANS number 16/92681



Finance

The contract on the construction of Smokovac-Mateševu section was agreed at the amount of €809 million, but in the beginning of autumn of 2018, it was announced that CRBC was requesting an additional 115 million for subsequent works, while the Government estimated that the cost of these works would be from €60 to 70 million [27].

That is, the construction costs of this section of the highway will increase only based on subsequent works from 7 to 15%.

Cost Description	Amount (in mill. €)
Contract value	809
CRBC's request	115
Government's assessment	60 - 70
TOTAL	869 – 924

Table 4: Costs

Therefore, the Government estimates that the value of the loan will be higher by around 10% than when it was signed, but in the period of record growth of the dollar the loan price was even 20% higher. Also, assessment by the Government and CRBC regarding the cost of additional work, especially Smokovac Interchange, are different. The table gives an overview of the projections presented by the Government and requests of CRBC, i.e. the value of the loan, depending on the movement of the dollar.

Description	Government projection (in mill. €)	Maximum (in mill. €)
Initial value of the loan	750	750
Increase in the value of the loan due to the growth of the dollar	80	155 ²⁸
Increase in contract value due to additional works	70	115 ²⁹
TOTAL INCREASE	150	270
Increase in %	20 %	35 %

Table 5: Differences in relation to Government projections

Smokovac Mateševu section will cost 20 to 35% more than agreed on the day of signing the loan, depending on the movement of the dollar, provided that there are no additional works besides Smokovac intersection.

[27] Article on Vijesti Portal of September 17, 2018, under the title „Kinezi traže još 115 miliona; link: <http://www.vijesti.me/vijesti/kinezi-traze-jos-115-miliona-da-zavrse-sto-je-brajuvic-zaboravio-1004587>

[28] Calculated on the basis of the highest dollar rate since the contract was signed.

[29] Article on Vijesti Portal of September 17, 2018, under the title „Kinezi traže još 115 miliona; link: <http://www.vijesti.me/vijesti/kinezi-traze-jos-115-miliona-da-zavrse-sto-je-brajuvic-zaboravio-1004587>



Finance

How much the Project Management Costs?

The management costs of the Smokovac-Mateševó project include expenses for the Engineer as a Supervisory Authority, as well as for two State Commissions in charge of documentation auditing and control of works, as well as for a separate organizational unit within the "Monteput".

The Contract with the Engineer is not available to the public and its value is not known [30], but MANS' information shows that **close to 4 million has been paid [31]** to the company "Ingerop MN", which has represented the Engineer, i.e. French-Italian Consortium **in the period of three years (2015-2017)**.

In addition, **€ 5.6 million has been allocated for the work of the two state commissions [32]** in charge of the Project of construction of the Smokovac-Mateševó Section.

Costs of the **Special Unit** in charge of the Highway Project in the company "Monteput" in 2017 amounted to around €1.4 million [33]. The decision establishing of this Special Unit [34] stipulates that the work plan and financial plan must be stated separately in the framework of the work plan and financial plan of "Monteput", but these data are not publicly available, except for 2017, and in the table are projections based on published data.

Management costs	2015. - 2017. (in mill. €)	2015. – 2019. (in mill. €)
Engineer - controller	4	4 +
State Commissions	?	5,6
PU Monteput	4 ³⁵	6 ³⁶
TOTAL		15

Table 6: Management costs 15 million

The cost of managing the construction of the highway amounts to at least €15 million. If the section Smokovac-Mateševó is not built within the planned deadline, or until May 2019, these costs will be increased, but it is not known for what amount. At the end of September 2018, the government had announced the delay in completing the Project for at least half a year [37].

[30] MANS requested the contract with the consultant for the supervision over the Project of construction of the highway from the Ministry of Transport and Maritime Affairs on the basis of the Law on Free Access to Information, but this request was not answered, so there is an ongoing legal proceedings before the Agency for Personal Data Protection.

[31] The exact amount is € 3,911,221; source: data from the Ministry of Finance submitted to MANS on the basis of the Law on Free Access to Information

[32] The exact amount is €5,667,040; Article 10 paragraph 2 of the Decision on the appointment of the State Commission for Technical Audit of Works for the Construction of Bar-Boljare Highway, the priority section Smokovac-Uvač-Mateševó (Official Gazette of Montenegro No. 30/15 and 44/17) and Article 8 of the Decision on the appointment of the State Commission for Auditing of Technical Documentation (Official Gazette of Montenegro No. 20/15)

[33] Annual Management Report for 2017, DOO "Monteput" Podgorica

[34] Decision on the Establishment of the Limited Liability Company "Monteput" Podgorica (Official Gazette of Montenegro 76/05, 68/09 and 33/14) and the Decision on the Establishment of the Business Unit for the Management of the Bar-Boljare Highway Construction Project (Official Gazette of Montenegro 35 / 14)

[35] Calculated on the basis of available data from 2017

[36] Calculated on the basis of available data from 2017

[37] Statement by Goran Vujović, director of PU for the highway in the "Monteput" in the TV show "Načisto" on TV Vijesti, broadcasted on September 27, 2018; link: <http://www.vijesti.me/tv/vujovic-autoput-ce-kasniti-oko-pola-godine-damjanovic-optimisticne-prognoze-1005818>



Subcontracting works

For three and a half years since the official start of the construction of the Smokovac- Mateševo section, the value of subcontracting contracts amounted to €404 million, which is half of the contracted price of works. A domestic company, Bemax, was given works worth € 234 million or almost 30 % of the total contract price of this section.

How much will subcontractors receive?

The contract stipulates that CRBC shall engage domestic companies as subcontractors, in the range of at least 30% of the contracted price [38] i.e. €242 million. The procedure implies that the Chinese company designates a subcontractor, then requests the consent of the Ministry of Transport for this and when it receives it, then it can start with conclusion of a subcontracting contract.

By the end of January 2018, the **Ministry of Transport gave CRBC approval for 99 companies** with which it could conclude subcontracting contracts, with 19 companies from the region and the rest from Montenegro [39].

Based on the Law on Free Access to Information, **MANS requested from the Ministry of Transport and "Monteput" all subcontracting agreements concluded, but they claim that they do not own them.**

Instead of subcontracting contracts, **"Monteput" has provided us with 73 so-called abstract contracts [40]**, which the Chinese company concluded with subcontractors as stand-alone firms or as consortia. However, the Agreement on the design and construction of Smokovac-Mateševo section clearly defined that CRBC concludes subcontracting agreements with the companies it hires, so it is clear that they must exist.

According to the abstracts that have been provided to us, these are short forms or contract terms with only four provisions, which define contract signatories, price and job description, as well as the deadline. However, **in a number abstracts of the contract it was stated that "the price can be changed in accordance with the actual scope of work on the site".**

The value of the abstracts of contracts with subcontractors, which are delivered to MANS on the basis of the request for access to information, **is € 404 million.**

[38] Clause 4.4 of the Contract on the Design and Construction of the Bar-Boljare Highway, section: Smokovac-Uvač-Mateševo, concluded under the General Conditions of the FIDIC Yellow Book of February 26, 2014

[39] <http://www.msp.gov.me/vijesti/180657/Saopštenje-Spisak-podizvodaca-angazovanih-na-izgradnji-prioritetne-dionice-autoputa-Bar-Boljare.html>

[40] Replies by "Monteput" Podgorica to MANS on the basis of the Law on Free Access to Information, MANS numbers 116457-116461, 117947-117952, 117998-118007, 118379-118383, 120141, 121436-121440, 122084-122086, 123299-123303, 124055-124059



Subcontracting works

 CHINA ROAD AND BRIDGE CORPORATION MONTENEGRO BRANCH	
ABSTRACT OF CONTRACT --PRIOR CONSENT 10 - Appendix no.1 --CRBC-MN-S2-2015-12-023	SAŽETAK UGOVORA -- PRETHODNA SAGLASNOST 10 – Prilog br.1 -- CRBC-MN-S2-2015-12-023
By and between: 1. China Road & Bridge Corporation D.O.O. Peking, PR China - Branch of foreign company Podgorica, registered with the Central Register of Business Entities, registration code 60012490, Tax Identification No. 03016480, with its place of business at: Nova Dalmatinska b.b., Podgorica, Montenegro (hereinafter referred to as: Contractor), represented by Gao Liang, an authorized representative of the Branch. and 2. Bemax d.o.o. registered at Podgorica, registration code 02643448, registries at Prva Banka Crne Gore AD with bank account number 535-6331-98; Tax Identification No.: 30/31-05947-9, with its place of business at: Moskovska 2b 81000, Podgorica . (Hereinafter referred to as: the Subcontractor), represented by Mr. Veselin Kovačević, an authorized representative.	Između: 1. China Road & Bridge Corporation D.O.O. Peking, NR Kina - Dio Stranog Društva Podgorica registrovan u Centralnom registru privrednih subjekata, registarski broj: 60012490, PIB: 03016480, sa sjedištem na adresi Nova Dalmatinska b.b., Podgorica, Crna Gora, (u daljem tekstu: Izvođač), koje zastupa Gao Liang, ovlašteni predstavnik društva. i 2. Bemax d.o.o. iz Podgorice, registrovan u Centralnom registru privrednih subjekata, registarski broj: 02643448, sa računom kod Prve Banke Crne Gore AD, broj računa: 535-6331-98; PIB: 30/31-05947-9, sa sjedištem na adresi Moskovska 2b 81000, Podgorica (u daljem tekstu: Podizvođač), koje zastupa Veselin Kovačević, ovlašteni predstavnik.
WORK DESCRIPTION Section Two: left lane LK21+172.5-LK22+744.87, right lane RK21+144-RK22+744.87 -Subgrade works -Drainage works -Engineering works (concrete retaining walls, reinforced earth, culverts) -Tunnel works: second half of the tunnel no. 7- Vjeternik (LK21+ 172.5-LK22+692, RK21 +144-RK22+570). I.e. Detailed description of Subcontract works are as follows: Parties mutually agreed for Tunnel Engineering of half of VJETERNIK tunnel (LK21+172.5-LK22+692&RK21+144-RK22+570); Main road (LK22+692-LK22+744.87 & RK22+570-RK22+744.87), including concrete retaining walls and drainage, anti-fire water reservoir and power station.	OPIS RADOVA Druga dionica: lijeva traka LK21+172.5-LK22+744.87, desna traka RK21+144-RK22+744.87 -Radovi na donjem stroju putne konstrukcije, -Drenažni radovi, -Građevinski radovi (betonski potporni zidovi, armirana zemlja, odvodni kanali) -Izgradnja tunela: druga polovina tunela br. 7 – Vjeternik (LK21+ 172.5-LK22+692, RK21 +144-RK22+570). Detaljan opis Podizvođačkih radova je sljedeći: Strane su saglasne da je predmet ovog ugovora izgradnja polovine tunela Vjeternik (LK21+172.5-LK22+692&RK21+144-RK22+570); glavni put (LK22+692-LK22+744.87 & RK22+570-RK22+744.87), uključujući betonske potporne zidove i drenažni sistem, protivpožarni rezervoar vode i trafostanicu.
VALUE OF CONTRACT The estimated Subcontract price amount will be 22,915,084.22€ (In words: Twenty-two Million Nine hundred and Fifteen Thousand Eighty-four Euros Twenty-two Cents). Price can be changed according to actually quantities of the works on site.	VRIJEDNOST UGOVORA Procijenjena cijena Podizvođača iznosi 22,915,084.22€ (slovima: dvadeset dva miliona devetsto petnaest hiljada osamdeset četiri eura i dvadeset dva centa). Cijena se može mijenjati u skladu sa stvarnim obimom radova na gradilištu.

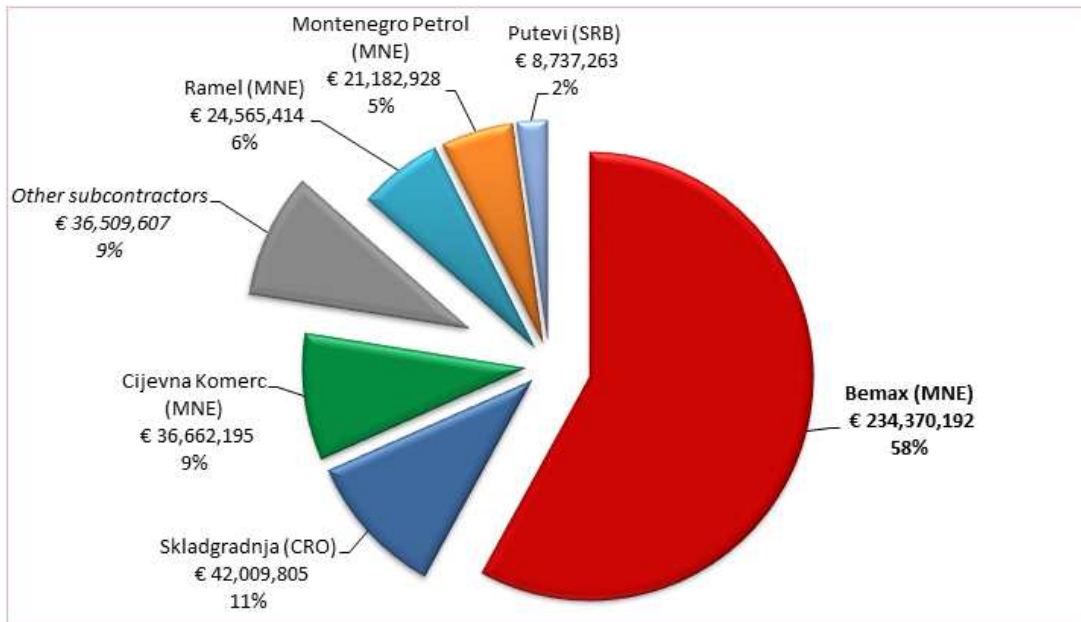
One of the abstracts of contracts submitted to MANS; source: Documentation of the "Monteput"



Subcontracting works

Which companies will receive the most?

The analysis of submitted documentation shows that in mid-2018, **the value of subcontracting was € 404 million** or half of the value of the entire contract. Even 90% of this amount, or € 367 million, has been agreed with **six subcontractors**.

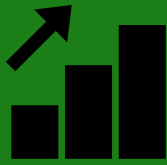


Graph 1: Value of contracted deals with subcontractors

Compared to the individual values of subcontracting, the **Podgorica-based company Bemax**, which **received € 234.3 million worth of works**, is the leading shareholder, which is **29% compared to the total price of the Contract** on the construction of Smokovac-Mateševu section, or **58% of the value of all subcontracting contracts**.

In the second place is the company **"Składgradnja" from Split**, whose subcontracting contracts are worth €42 million, followed by **"Cijevna Komerc" from Podgorica** with €36.6 million, **"Ramel" from Nikšić** with €24.5 million, the company **"Montenegro Petrol" from Podgorica** that has contracted €21 million worth of works and **"Putevi" from Užice**, with €8.7 million of contracted works.

The contract stipulates that the contractor, i.e. the Chinese company is responsible for payments to subcontractors, but **no documentation has been submitted to MANS to show how much has been paid to subcontractors** hired on the Smokovac-Mateševu Construction Project so far.



Subsidies

The contractors of the works on the highway have received numerous subsidies, and since the start of the construction, the Chinese company has been exempted from payment of a fee of at least €112 million.

What is not paid by the contractors?

Contractors on the highway do not pay VAT, customs duties, taxes and contributions to foreign workers, income tax, fees for technical-construction stone, and they also refund the fuel excise tax. The attached table gives an overview of various benefits to contractors of works that are prescribed by laws.

Value Added Tax	Value added tax is paid at a rate of 0% on the turnover of products and services intended for the construction of a highway implemented by the contractor, or this implementation is realized at the expense of the contractor for the construction of the highway ⁴¹ .
Customs	They are exempt from payment of customs duties: 1) construction material intended for the construction of the highway; 2) equipment intended for installation into the highway and highway construction; 3) facilities intended for installation into the highway facilities and for the construction of highways that are imported to Montenegro by the contractor for the construction of the highway ⁴²
Excise	When purchasing gas oils used as motor fuel for industrial and commercial purposes, the contractor that uses these oils to perform works on the Bar-Boljare highway project, reimburses part of the paid excise above the amount of €169 euros per 1000 litres, while the subcontractor reimburses part of the paid excise above the amount of € 259 euros per 1000 litres. The amount of the realized right to a refund for subcontractors cannot exceed the amount up to 1.5% of the realized turnover during the year on that basis ⁴³ .
Income taxes and contributions for social insurance of foreign workers	Personal income tax realized in Montenegro is not paid by persons employed by the contractor, who are not citizens of Montenegro, or do not have a permanent residence in Montenegro , and whose income is generated by work on the construction of the highway ⁴⁴ . A foreign citizen employed by the contractor, engaged in the construction of a highway, is exempted from paying contributions for compulsory social security ⁴⁵ .
Income tax	A legal entity, established in Montenegro, and founded by and 100-percent owned by the contractor, shall calculate the income tax on income derived from the construction of the highway for a period of six years, from the beginning of the construction of the motorway, and shall be reduced by 100% ⁴⁶ .
Technical-construction stone	The contractor engaged in the construction of the highway may use the technical-construction stone that occurs in the process of carrying out the works on the construction of the highway and may perform the production of technical-construction stone exclusively for the purpose of constructing of the highway, free of charge . The required amount of technical and construction stone and the borrowing facilities from which production will be carried out will be determined by the main project of construction of the highway ⁴⁷ . The provisions of the law governing concessions are not applied to the procedure for the use and production of state-owned technical and construction stones ⁴⁸ .

Table 7: Description of subsidies

[41]Article 16 of the Law on the Bar-Boljare Highway

[42]Article 21 of the Law on the Bar-Boljare Highway

[43]Article 30 Law on Excise

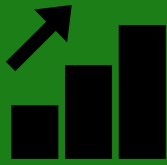
[44]Article 17 of the Law on the Bar-Boljare Highway

[45]Article 18 of the Law on the Bar-Boljare Highway

[46]Article 19 of the Law on the Bar-Boljare Highway

[47]Article 14 of the Law on the Bar-Boljare Highway

[48]Article 15 of the Law on the Bar-Boljare Highway



Subsidies

What is the amount of subsidies?

According to the information provided by the institutions to the media, Chinese company has been exempt in the period of three and a half years of various taxes in the amount of at least €112 million. Official data is only available for VAT exemptions for a period of three years.

According to media reports, CRBC has been exempt in the period of three and a half years from various charges in the amount of around € 112 million. **Based on VAT, this company is exempt from paying €72 million, while it was exempt in the amount of € 6.2 million from taxes and contributions for earnings until the beginning of 2018 [49]. In the first part of this year, the CRBC was granted an additional €10 million exemption for VAT [50].**

In addition, by the beginning of 2018, Chinese company was **exempted from paying customs in the amount of around €20 million, as well as € 1.65 million on the basis of excise duties on motor fuel [51],** while subcontractors were exempted from excise duties in the amount of €2.8 million [52].

TYPE OF BENEFITS	AMOUNT (in mill. €)	PERIOD
VAT	82	2015-mid 2018
Tax on earnings and contributions	6,2	2015-2017
Customs	20	2015-2017
Excise taxes on fuel – CRBC	1,65	2015-2017
Excise taxes on fuel – subcontractors	2,8	
TOTAL	112	

Table 8: Exemptions from fees for CRBC and subcontractors (Source: media information)

According to the information provided by the Tax Administration [53], in the period of around three years during which CRBC was exempted from VAT, the value of imports and services was around €312 million euros [54]. In relation to this amount, **CRBC is exempted from paying VAT in the amount of around € 60 million.**

As mentioned in chapter eight, the competent authorities have banned access to key data on the basis of which it is possible to determine the amount of subsidies given to both the Chinese company and subcontractors.

According to the Law on Highway, CRBC has the right to use a **technical-construction stone** for the construction of a highway and **produce** it free of charge. Data on how much technical and construction stones have been excavated so far are not available.

[49] Article in the daily "Dan" of February 10, 2018. godine, under the title „Kinezima oprostili 78 miliona za poreze“; link: <https://www.dan.co.me/?nivo=3&rubrika=Vijest+dana&clanak=634496&datum=2018-02-10>

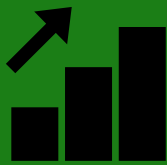
[50] Article at CDM Portal of June 28, 2018 under the title“Kinezi oslobođeni 10 miliona PDV-a i 313 hiljada eura akcize na gorivo“; link: <https://www.cdm.me/ekonomija/kinezi-oslobodeni-10-miliona-pdv-a-i-313-hiljada-eura-akcize-na-gorivo/>

[51] Article in the daily "Dan" of February 19, 2018. godine, under the title „Kineze oslobodili 20 miliona carine“; link: <https://www.dan.co.me/?nivo=3&rubrika=Ekonomija&clanak=635611&datum=2018-02-19>

[52] Article at Vijest Portal of March 13, 2018. under the title „Kineze i domaće država častila 29 miliona eura“, link: <http://www.vijesti.me/vijesti/kineze-i-domace-drzava-castila-29-miliona-eura-979771>

[53] Monthly reports from the Tax Administration on the used control stamps supplied by the Chinese company China Road and Bridge Corporation, which MANS received on the basis of the Law on Free Access to Information; MANS is in possession of the report for June, July, August, September, October, November and December 2015, all monthly reports for 2016 and 2017, as well as reports for January, February, May and June 2018; The Tax Administration rejected requests for March and April 2018, stating that they are not in its possession

[54] By the end of 2017, until the value added tax rate of 19% was applied in Montenegro, the total amount was €254.704.088, and from the beginning of 2018, from the rate of value added tax rate is 21%, the amount of import amounts to 58.116.861



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[53] Monthly reports from the Tax Administration on the used control stamps supplied by the Chinese company China Road and Bridge Corporation, which MANS received on the basis of the Law on Free Access to Information; MANS is in possession of the report for June, July, August, September, October, November and December 2015, all monthly reports for 2016 and 2017, as well as reports for January, February, May and June 2018; The Tax Administration rejected requests for March and April 2018, stating that they are not in its possession

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The veil of secret

Since the start of negotiations with the Government in Beijing and CRBC company, the Government of Montenegro and the Ministry of Transport have refused to provide most of the basic information regarding the implementation of the largest infrastructure project in the country. This information would show in what way the money from the loan for the construction of the highway is spent, are the deadlines respected and in what way the project control is carried out.

What is declared to be secret in advance?

The Ministry of Transport has in advance declared information on the highway that includes administrative acts, finances, plans and programmes, data on control of the implementation of the project and disputes, as well as technical documentation and other acts [55] to be secret. The data classified by the Ministry as secret and designated as "internal" are presented in the table below [56].

TYPE OD ACTS	DESCRIPTION OF DOCUMENTS
ADMINISTRATIVE ACTS	Approvals, consents, opinions, decisions, confirmations, instructions, notices, requests / orders
FINANCES	Notice of claims of the Constructor
	Notice of claims of the Investor
	Payment schedule of the Constructor
	Interim Payment Certificate and Interim Payment Statement
PLANS AND PROGRAMMES	Requests for issuing final certificate
	Programme of works
CONTROL	Audit plan for technical documentation
	The Contractor's report on the progress of works
	Determinations and Engineer Reports
	Monthly report of the Project Manager
DISPUTES	Audit reports on the technical documentation which are not final
	Criteria for measurement and assessment of subsequent and unforeseen works
	Notices on initiating a dispute before the Dispute Resolution Commission
TECHNICAL DOCUMENTATION AND OTHER ACTS	Decisions of the Dispute Resolution Commission
	Textual and graphical documentation of a technical nature
	Documentation of the as-built drawings
	Minutes from the meetings
	Proposals by the Contractors, Engineer, Project Managers and Government representatives, which are variable categories and affect current contractual positions

Table 9: A set of documents secret

According to the Law on Secrecy of Data, the information whose disclosure would lead to adverse consequences for Montenegro's security, foreign, monetary and economic policies are classified information [57], while the "internal" designation is determined if disclosure of information would lead to adverse consequences for the exercise of the office of an authority [58]. Secrecy of data which are marked with the degree "internal", stops at the expiration of a two-year deadline [59], and this deadline can be extended for another two years.

[55] Decision of the Ministry of Transport and Maritime Affairs No. 34-451 / 2016-1 of 1 August 2016, signed by the then Minister of Transport Ivan Brajović, and the Decision of the Ministry of Transport and Maritime Affairs No. 34 / 17-01-2229 / 1 of 7 April 2017, signed by the current Minister Osman Nurković;

[56] Ibid.

[57] Article 3 of the Law on Secrecy of Data (Official Gazette of Montenegro 14/08, 76/09, 41/10, 40/11, 38/12, 44/12, 14/13, 18/14, 48/15)

[58] Article 12 of the Law on Secrecy of Data (Official Gazette of Montenegro 14/08, 76/09, 41/10, 40/11, 38/12, 44/12, 14/13, 18/14, 48/15)

[59] Article 19a of the Law on Secrecy of Data (Official Gazette of Montenegro 14/08, 76/09, 41/10, 40/11, 38/12, 44/12, 14/13, 18/14, 48/15)



The veil of secret

Should it be secret?

In mid-2016, the Ministry of Transport in advance declared 20 types of different documents related to the implementation of the Highway Project to be secret and designated them "internal". They explained that the publication of these data could jeopardize the contractual position of the bodies and the legal procedures that are ahead regarding the implementation of the Agreement.

Already in April 2017, the Ministry adopted a new solution [60] and designated the same degree of secrecy of the same data. However, the new solution also **includes a new item concerning the notification of the parties on initiating a dispute before the Dispute Resolution Commission.**

In the reasoning, the Ministry generally lists several reasons for declaring the data secret, and no reason for any of these documents to become public under certain conditions. The table below presents the key arguments of the Ministry.

CATEGORY	EXPLANATION OF SECRECY	WHICH INFORMATION IT REFERS TO
Business secret	They influence the implementation of the plans of the Government regarding the implementation of this section and future sections of the highway.	All documents
Protection of competition	Information can be used as input and comparative parameters for a comprehensive due diligence analysis related to the preparation, implementation, management, maintenance of other sections, in order to define optimal investment conditions (requirements) to all potential stakeholders, by applying the principle of equal treatment, free competition and non-discrimination and in order to best protect the Government.	All documents
Economic interests	They can negatively affect the project management and jeopardize the interests of the Government if CRBC were familiar with it because they contain opinions, views, recommendations for dealing with possible changes and corrections.	Criteria for measurement and assessment of subsequent and unforeseen works. Notice of Claims of the Contractor and the Investor. Notice of initiating a dispute before the Dispute Resolution Commission. Determining of Engineers. Reports of the entities involved in monitoring the implementation of the Project.
Intellectual property of the Government	Defined types of documents by their nature represent intellectual property.	All documents
Variable data and misinterpretation of information content	Information that arises in the process of preparing and harmonization of views and opinions within one or more of the entities on the side of the Government and publishing them before the final form could lead to misinterpretation of the content of the information.	Decisions of the Dispute Resolution Commission. Audit reports on the technical documentation and reports on its audit. Requirements for issuing of temporary situations and temporary situation. Programme of works. Payment schedule.
Security	Ensuring optimal security in the use of the highway.	Textual and graphical documentation of a technical nature.

Table 10: The reasons of the Government

[60] Decision of the Ministry of Transport and Maritime Affairs number 34/17-01-2229/1 of April 07, 2017; The Decision is Annex 2 of this Report



The veil of secret

Trade secret

The government claims that all the documents listed are a trade secret, as they influence its plans regarding implementation of this and the future sections of the highway. International standards show that this information in the possession of state authorities cannot be considered a trade secret.

In Directive (EU) 2016/943 of the European Parliament and of the Council of the European Union of 8 June 2016 defines the protection of undisclosed know-how and experience, and business information (trade secret) against unlawful acquisition, use and disclosure, and this information must meet **all of the following requirements:**

- a. it is secret in the sense that **it is not**, as a body or in the precise configuration and assembly of its components, **generally known** among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- b. **it has commercial value because it is secret;**
- c. it has been subject to **reasonable steps** under the circumstances, by the person lawfully in control of the information, **to keep it secret;**

The analysis of the international organization Access Info states that it is clear from comparative law and practice that "state authorities cannot declare business or commercial secrets in order to protect their alleged interests", since "by definition, state authorities work in the public interest and do not have business interest that needs to be protected" [61].

Competition and economic interests

The ministry said that the publication of data could have a negative impact on the competition and government's plans, not only in connection with the implementation of this section of the highway, but also the preparation of the next ones. Most of these documents were produced by the Chinese company or it is in its possession.

The existing section of the highway is being built on the basis of the Main Project, done by CRBC, as well as the vast majority of documents, classified by the Government as secret, already owned or produced by the Chinese company. If these data are really significant for competition and declared secret, this means that the CRBC is in a much more favourable position than any other company to get the job of construction of other parts of the highway.

[61]Analysis: Montenegro's Law on Free Access to Information, Helen Darbishire, Access Info



The veil of secret

The Ministry also stated that disclosing these data could jeopardize the interest of the Government as an investor if the CRBC were familiar with the information containing opinions or views, which would have a negative impact in case of an arbitration dispute.

However, such **justification is completely unfounded**, bearing in mind that the **FIDIC agreement contains a clear procedure for mutual notifying of the parties which submit to each other all requests for claims or initiating of disputes.**

Also, the Ministry states that it must not publish Criteria for measurement and assessment of subsequent and unforeseen works, so that CRBC would not find out about them because they contain opinions, views, recommendations for dealing with possible changes and corrections.

However, these criteria directly affect the value of the contract, and therefore the amount that citizens will pay, taking into account unforeseen works that are estimated between 60 and 115 million Euros [62].

Protection of intellectual property

The Government does not explain in more detail the reasons why for all the listed documents it states that "by their nature" they represent its intellectual property. Intellectual property may limit the reuse of information, but not the access to information content, especially if there is a public interest in it.

According to the analysis by one of the leading international experts on free access to information, "when it comes to intellectual property, there is no "per se" basis for denial of access, and therefore it is not included as an exception to the Council of Europe Convention on Access to Official Documents" [63].

"While intellectual property may limit the reuse of information, it cannot be a basis for not providing information," but there should be restrictions on their use [64]. "The only basis for refusing to provide information should exist in case of harm to economic (business) or some other legitimate interest, and when there is no public interest in publishing this information" [65].

However, "monitoring the activities of state authorities and their connections (financial and other) with private entities is a clear public interest," and "the public's right to know what is contained in the information that was part of the decision-making process does not violate copyrights" [66].

[62]<http://www.vijestitytyy67.me/vijesti/kinezi-traze-jos-115-miliona-da-zavrse-sto-je-brajovic-zaboravio-1004587>

[63]Analysis: Montenegro's Law on Free Access to Information, Helen Darbshire, Access Info

[64]Ibid.

[65]Ibid.

[66]Ibid.



The veil of secret

Suspension of other laws

The Ministry has practically suspended the implementation of the Law on Inspection Control and the Law on Free Access to Information in the public part in relation to the Highway Construction Project.

The first law prescribes that the inspection control is public [67], while the second that all state bodies proactively publish on their internet websites decisions and other single acts that are of importance for the rights, obligations and interests of third parties [68].

On the other hand, the Ministry in advance declared a set of administrative acts, primarily decisions, approvals, consents and opinions to be secret.

The Ministry argues that these acts are variable categories that do not have a binding form for the contractual parties, and that **their publishing could lead to misinterpretation of the content of the information and seriously jeopardize the decision-making process itself**, especially if CRBC were familiar with them.

However, CRBC must be familiar with any such act relating to the highway, as the institutions are obliged to provide this information to it as a party in an administrative or inspection procedure. Accordingly, the explanation of the Ministry is completely unfounded.

Variable data and misinterpretation of the public

The Ministry of Transport stated that numerous documents on the highway were declared secret because they are not final, but "represent variable contracting categories", so that "their publication before the final form of the decision could lead to misinterpretation of the content of the information". That is exactly how the Ministry explained even hiding of documentation on the dynamics of the payment of money for the highway.

In this way, the Ministry disables public debate and public participation in decision-making, as well as determining responsibilities in the work of public officials.

[67] Article 8 of the Law on Inspection Control (Official Gazette of Montenegro 39/03, 76/09, 57/11, 18/14, 11/15, 52/16)

[68] Article 12 Paragraph 1 Item 10 of the Law on Free Access to Information



The veil of secret

Regarding the ongoing processes, the Court of Justice of the European Union is clear that the process does not have to be completed nor the documents have to become "official" before the introduction of the public interest. Even if documents were changed during the course of the process, the Court has repeatedly confirmed that "it is clear to the public that the author of the proposal will subsequently probably change its content" [69].

The Ministry has declared "timetable for payments" [70] that shows the **deadlines for payments to the Chinese company** to be secret, as demand for issuing of temporary situations and the temporary situation itself, containing **information on the prices of works carried out monthly or additional labour costs** [71].

The Ministry claimed that these were documents that were variable contracting categories, and their publishing before the completion of works could lead to misinterpretation of information [72].

However, it is **undisputed that these are documents that are independent and final**, and since they contain data on cost prices and payment deadlines, citizens have the right to know how their money is spent.

What was subsequently declared secret?

In addition to information that is in advance classified as "internal" by the Ministry's solutions, several other information has been declared secret as well, after submitting a request for access to information.

[69] Access Info Europe v Council, T 233/09, EU:T:2011:105, Paragraph 69, and De Capitani v European Parliament, Case T 540/15, ECLI:EU:T:2018:167

[70] Article 14.4 of the FIDIC Agreement on the design and construction of the Bar-Boljare highway, section Smokovac-Uvač-Mateševo, reads: "The Parties will define, within 14 days of the adoption of the work programme, and coordinate with each other and with the Engineer the payment schedule. The Contractor will be paid in accordance with the agreed payment schedule."

[71] Articles 14.3 and 14.6 of the FIDIC Agreement on the design and construction of the Bar-Boljare highway, section Smokovac-Uvač-Mateševo, which specify in detail what the Interim Payment Statement and the Interim Payment Certificate should contain. Regarding the "Timetable of Payments" document, the Ministry of Transport and Maritime Affairs stated that "the schedule of work and the Timetable of payments based on it are variable contract categories until the end of the Project implementation, because they represent the Contractor's plan (assessment) of organisational, work and resource structure and all relevant activities related to design, production, procurement, on-site works until the completion of the Project, and as such, these documents may be subject to further revisions and corrections until the end of implementation of the Project"; in connection with the documents "requests for Interim Payment Statement" and "Interim Payment Certificate", the Ministry of Transport and Maritime Affairs stated that these were "variable categories (current and contractual administration) up to the moment of confirmation by the Engineer (Supervising Authority) and payment by the Investor"

[72] Regarding the "Timetable of Payments" document, the Ministry of Transport and Maritime Affairs stated that "the schedule of work on the basis of it is based on the Timetable for payment of a variable contract category until the end of the Project realization, because they represent the Contractor's (organizational, work and resource structure) all relevant activities related to design, production, procurement, on-site works until the completion of the Project, and as such, these documents may be subject to further revisions and corrections to the end of the implementation of the Project"; regarding the documents "requests for issuance of temporary situations" and "temporary situation", the Ministry of Transport and Maritime Affairs stated that these were "variable categories (current and contractual contracting administration) up to the moment of confirmation by the Engineer (Supervisory Authority) and payments by Investor"



The veil of secret

Secret negotiations even after they are completed

Montenegrin Government chose in the middle of 2013 the offer of the Chinese company China Road and Bridge Corporation as the most favourable for the construction of the Smokovac-Mateševo section. On the basis of the Law on Free Access to Information, **back then MANS asked the Ministry of Transport to submit the offer the Chinese company [73]**, which was supposed to show some of the basic elements of the future contract arrangement, above all the proposed price of work, terms of financing and deadlines for the construction of that section of the highway.

The Ministry of Transport rejected the request with an explanation that it was a secret data, so MANS initiated an administrative procedure and the court annulled such decision of the Ministry as unlawful [74]. Even after such ruling, the Ministry again referred to the confidentiality of data, arguing that negotiations with the Chinese company were underway and that the disclosure of data could **have adverse consequences for Montenegro's foreign and economic policy [75]**.

Ministry: Information is secret because of economic and foreign policy

"Considering that negotiations on the construction of the highway were being conducted, and that there were contacts with Chinese officials in the negotiations, as well as the opinion of foreign companies that, during the negotiations, the information should be protected, it was estimated that at the moment of negotiations, it would be detrimental to the interest of these negotiations, or harmful to the foreign and economic interests of Montenegro, to allow the public to have insight into the information that is protected" [76].

However, the Ministry gave such response in August, when the negotiations had already been completed, because five months earlier, a contract on designing and construction of Smokovac- Mateševo section was signed in February [77].

The content of the Chinese company's offer has not been revealed to the Montenegrin public for more than five years since the Government accepted it, although this documentation is **particularly significant in case of a dispute between the Government and China Road and Bridge Corporation** regarding the implementation of the Agreement [78].

[73]MANS Request for Free Access to Information No. 13/53987 of 8 July 2013, sent to the Ministry of Transport and Maritime Affairs

[74] Verdict of the Administrative Court No. 66/2014 of 18 June 2014, annulling the Decision of the Ministry of Transport and Maritime Affairs, concerning the rejection of the request for free access to information to MANS

[75] Decision of the Ministry of Transport and Maritime Affairs rejecting the request for information of 13 August 2014, referring to MANS' request for free access to information No. 13/53987 of 8 July 2013

[76]Decision of the Ministry of Transport and Maritime Affairs rejecting the request for information of 13 August 2014, referring to MANS' request for free access to information No. 13/53987 of 8 July 2013

[77]Contract on design and construction of Bar-Boljare highway, section: Smokovac-Uvač-Mateševo, concluded in Podgorica on February 26, 2014

[78] Clause 1.5 of General Conditions of the FIDIC Yellow Book, agreed between the Government of Montenegro, represented by the Ministry of Transport and Maritime Affairs, and the Chinese company China Road and Bridge Corporation, is defined as follows: "Documents constituting the Contract should be considered as documents which clarify each other. For the purpose of interpretation, the priority of the documents is as follows: 1. Framework Agreement of February 26, 2014. 2. Contract, 3. Bid (including Letter of Bid of February 7, 2013, with amendments of June 13, 2013 and June 20, 2013), 4. Special conditions, 5. General conditions, 6. Contract data, 7. Requirements of the Investor including Project task for preparation of the Main Project, 8. Existing Conceptual Design, drawings and all accompanying data, 9. Completed Schedules (if any), 10. Letter of Acceptance of the Bid, 11 Other documents that are an integral part of the Agreement."



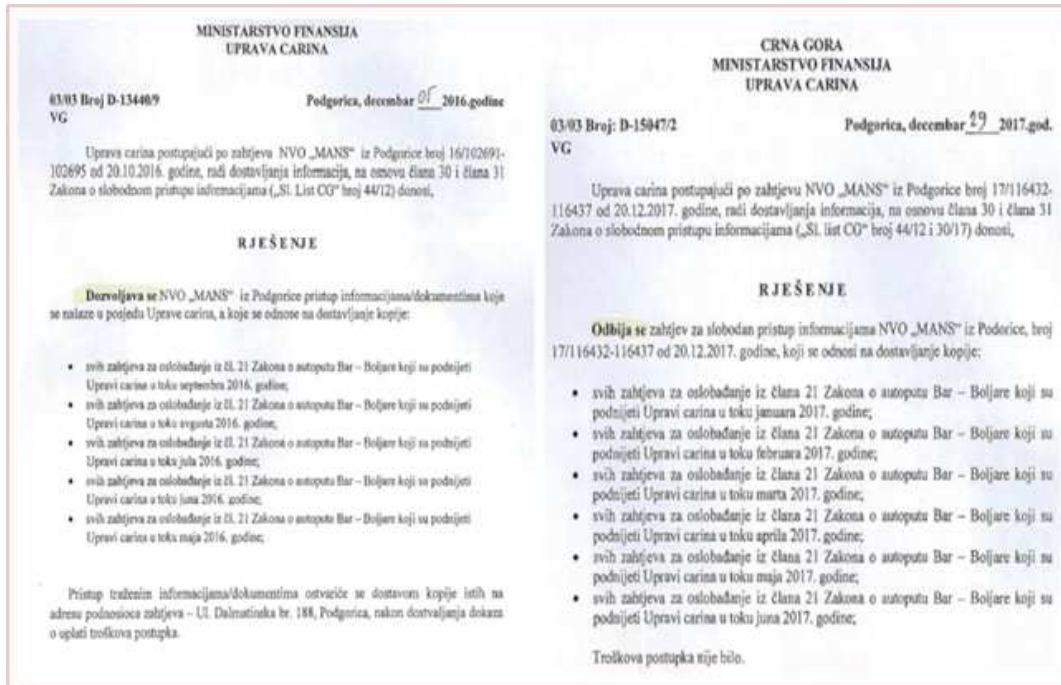
The veil of secret

Customs Administration: Public, and then secret

According to the Law on Bar Boljare Highway, **import of building materials, equipment and facilities, which are intended for the construction of the highway have been exempted from the payment of customs duties [79].** The customs clearance procedure is detailed in a by-law [80] and implies the obligation of the CRBC to deliver, along with customs declarations, control stamps for the highway.

At the end of 2016, the Customs Administration issued all customs declarations and control stamps for the highway submitted in the second part of that year [81]. Control stamps are typical data on the value of goods that are exempt from customs duty, while customs declarations contain information on the value of goods being imported, suppliers and import dates.

Already in the following year, that institution changed the practice and declared the data official secret [82], stating that the custom payer to which the data relate did not give the permission to disclose the data, and that there was no prevailing public interest in their disclosure, although the customs exemptions under the Project highway was 20 million Euros.



Customs Administration changed the practice in access to information: Source: Customs Administration's decisions delivered to MANS

[79]Article 21 of the Law on Highway (Official Gazette of Montenegro 52/14)

[80] Rulebook on the procedure for exemption from payment of tax and customs duties for the construction of the Bar-Boljare highway (Official Gazette of Montenegro 3/15, 13/15, 31/15, 37/16)

[81]Requests for free access to information of MANS addressed to the Customs Administration, MANS numbers 16/102691-102694

[82]Requests for free access to information of MANS addressed to the Customs Administration, MANS numbers 17/116432-116437



The veil of secret

Data on foreign workers is a tax secret

For foreign nationals employed in the construction of the highway, no income tax and compulsory social security are paid [83], and for this type of records the Tax Administration [84] is in charge, to which CRBC reports on the paid earnings [85]

The Tax Administration has declared information about CRBC employees a tax secret, assessing that their disclosure would create distrust of taxpayers towards that institution, which was estimated as a greater harm than the public interest for disclosing information.

In this way, the data on the number of foreign nationals employed in the Smokovac-Mateševo Construction Project and the revenues that the state renounces on this basis were hidden.

CRNA GORA
MINISTARSTVO FINANSIJA
PORESKA UPRAVA

Broj: 03/1- 2847/2-18 Podgorica, 20. februar 2018. godine

Ministarstvo finansija, Poreska uprava na osnovu člana 30 stav 1 Zakona o slobodnom pristupu informacijama ("Sl. list CG", br. 44/12 i 30/17), postupajući po zahtjevu Mreže za afirmaciju nevladinog sektora - MANS, sa sjedištem u Podgorici, Dalmatinska 188, d o n o s i

R J E Š E N J E

Odbija se kao neosnovan zahtjev Mreže za afirmaciju nevladinog sektora - MANS, br. 18/118384 - 118389 od 09.02.2018. godine, kojim je tražen pristup informaciji dostavom obrasca IOPPD za januar, februar, mart, april, maj i jun 2015. godine u elektronskoj formi, koji je China Road and Bridge Corporation dostavila Poreskoj upravi, a po osnovu ugovora o projektovanju i izgradnji autoputa Bar-Boljare, dionica Smokovac-Mateševo.

O b r a z l o ž e n j e

Mreža za afirmaciju nevladinog sektora – MANS iz Podgorice, podnijela je Poreskoj upravi zahtjev br. 18/118384 - 118389 dana 09.02.2018. godine, kojim je tražen pristup informaciji dostavom obrasca IOPPD za januar, februar, mart, april, maj i jun 2015. godine u elektronskoj formi, koji je China Road and Bridge Corporation dostavila Poreskoj upravi, a po osnovu ugovora o projektovanju i izgradnji autoputa Bar-Boljare, dionica Smokovac-Mateševo.

Postupajući po zahtjevu, poreski organ je utvrdio da se tražena informacija nalazi u njegovom posjedu ali da se zahtjevu ne može udovoljiti iz razloga što je riječ o informacijama koje predstavljaju poresku tajnu, shodno članu 16 stav 1 Zakona o poreskoj administraciji ("Sl.list RCG", br.65/01,...20/11...28/12...08/15).

Naime, poreska tajna je svaka informacija ili podatak o poreskom obvezniku kojim raspolaže poreski organ, osim informacija i podataka za koje poreski obveznik pisano izjavi da se ne smatraju poreskom tajnom, kao i informacija i podatak koji se ne mogu povezati sa konkretnim poreskim obveznikom niti se na drugi način mogu identifikovati, odnosno informacije koje Poreska uprava objavljuje kvartalno o listi poreskih dužnika.

Stavom 2 ovog člana propisano je da se podaci koji predstavljaju poresku tajnu mogu učiniti dostupnim drugom državnom organu, na zahtjev tog organa i u skladu sa zakonom.

Tax Administration refuses to provide information on employees: Source: Tax Administration's Decisions

[83]Articles 18 and 19 of the Law on the Highway (Official Gazette of Montenegro 52/14)

[84]Rulebook on the procedure for exemption from payment of tax and customs duties for the construction of the Bar-Boljare highway (Official Gazette of Montenegro 3/15, 13/15, 31/15, 37/16)

[85]The Contractor submits the so-called IOPPD Form, in which data on the paid salary without calculation of income tax for individuals and contributions for compulsory social security are entered



Annex

Montenegro
Ministry of Transport and Maritime Affairs

Number: 34/17-01-2229/1

Podgorica, April 7, 2017

Pursuant to Article 10 Paragraph 2 of the Law on Secrecy of Data (Official Gazette of Montenegro 14/08, 76/09, 41/10, 40/11, 38/12, 44/12, 14/13, 18/14 and 48/15) I adopt

DECISION

In accordance with Article 12, Paragraph 5 of the Law on Secrecy of Data (Official Gazette of Montenegro, no. 14/08, 76/09, 41/10, 40/11, 38/12, 44/12, 14/13, 18/14 and 48/15), the following documents related to the implementation of Bar-Boljare highway project, the Smokovac-Uvač-Matešev section, are confidential and designated as INTERNAL and their disclosure would result in the harmful consequences for the exercise of the office of the bodies:

Approvals, consents, opinions, resolutions, certificates, instructions, notices, announcements, requests/orders, proposals of the Contractor, Engineer (Supervising Authority), Representative of the Investor (Project Manager) and the Investor, which are a variable category and affect the current contractual positions of the Contracting Parties regarding the implementation of the Contract on the Design and Construction of the Bar-Boljare Highway, Smokovac-Uvač-Matešev section (Official Gazette of Montenegro No. 54/14), the Contract on providing consulting services with the elected Supervising Authority in connection with the implementation of the Project (No. 01-4683/2, of 11.09.2014) and the Project Management Contract with the Project Manager/Representative of the Investor (No. 016099/1 of 12 November 2014);

Technical documentation (textual and graphic) required for design, execution of works, completion and elimination of deficiencies in order to ensure adequacy, stability and safety of all works on the site and all methods of execution of works in accordance with sub-clause 5.2 of the Contract on design and construction of the Bar-Boljare highway, section Smokovac-Uvač-Matešev ("Official Gazette of Montenegro" No. 54/14);

As-built documentation state according to the sub-clause 5.6 of the Contract on the design and construction of the Bar-Boljare highway, section Smokovac-Uvač-Matešev ("Official Gazette of Montenegro" No. 54/14);

Information on the claims of the Contractor in accordance with sub-clause 20.1 Contract on the design and construction of the Bar-Boljare highway, section Smokovac-Uvač-Matešev ("Official Gazette of Montenegro" No. 54/14);

Notice of claims of the Investor in accordance with sub-clause 3.5 of the Contract on the Design and Construction of the Bar-Boljare Highway, Smokovac-Uvač-Matešev (Official Gazette of Montenegro 54/14);

Findings of the Engineer in accordance with sub-clause 3.5 of the Contract on the Design and Construction of the Bar-Boljare Highway, section Smokovac-Uvač-Matešev ("Official Gazette of Montenegro" No. 54/14);

Programme of works in accordance with sub-clause 8.3 of the Contract on the design and construction of the Bar-Boljare highway, section Smokovac-Uvač-Matešev ("Official Gazette of Montenegro" No. 54/14);

Time schedule of payment of the Contractor in accordance with sub-clause 14.4 of the Contract on design and construction of the Bar-Boljare highway, section Smokovac-Uvač-Matešev ("Official Gazette of Montenegro" No. 54/14);



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Requests of the Contractor for issuing the Interim Payment Statement in accordance with sub-clause 14.3 and Interim Payment Certificate in accordance with sub-clause 14.6 of the Contract on the Design and Construction of the Bar-Boljare Highway, section Smokovac-Uvač-Mateševo ("Official Gazette of Montenegro" No. 54/14);

Requests of the Contractor for issuing the Final Payment Statement in accordance with sub-clause 14.11 of the Contract on the Design and Construction of the Bar-Boljare Highway, section Smokovac-Uvač-Mateševo ("Official Gazette of Montenegro" No. 54/14);

Notices of the contractual parties on initiating a dispute before the Dispute Settlement Commission in accordance with sub-clause 20.4 of the Contract on design and construction of Bar-Boljare highway, section Smokovac-Uvač-Mateševo ("Official Gazette of Montenegro" No. 54/14);

Decisions of the Dispute Resolution Commission in accordance with sub-clause 20.4 of the Contract on the Design and Construction of the Bar-Boljare highway, section Smokovac-Uvač-Mateševo ("Official Gazette of Montenegro" No. 54/14);

Report by the Contractor on the progress of works in accordance with sub-clause 4.21 of the Contract on the Design and Construction of the Bar-Boljare Highway, section Smokovac-Uvač-Mateševo ("Official Gazette of Montenegro" No. 54/14);

Reports of the Engineer (Supervising Authority) in accordance with Article 1.6.1 of the Project Task for the Engineer;

Monthly Report of the Project Manager on project progress in accordance with Annex 1 of the Project Management Contract (No. 01-6099/1 of November 12, 2014);

Audit plan for technical documentation;

Reports on the audit of the State Commission for the audit of technical documentation that are not final;

Criteria for measurement and assessment of subsequent and unforeseen works;
Minutes of meetings.

Changing or abolishing of the degree of confidentiality of data will be carried out in accordance with Article 19b Paragraph 2 of the Law on Secrecy of Data ("Official Gazette of Montenegro" No. 14/08, 76/09, 41/10, 40/11, 38/12, 44/12, 14/13, 18/14 and 48/15).

On the day of the entry into force of this Decision, the Decision on determining the degree of secrecy of data "INTERNAL" no. 34-451 / 2016-1 from August 1, 2016 shall cease.

Reasoning

Article 10 Paragraph 2 of the Law on Secrecy of Data ("Official Gazette of Montenegro" No. 14/08, 76/09, 41/10, 40/11, 38/12, 44/12, 14/13, 18/14 and 48/15) stipulates that an authorized person for determining the level of secrecy of the information shall by a reasoned decision declare the information secret and determine the degree of its secrecy.

In accordance with the prescribed procedure in the proceeding for issuing this Decision, a harm test for disclosure of information no. 34/17-01- 2229/2 of April 07, 2017 was performed.

Bearing in mind that the process of implementation of the project for the construction of Bar-Boljare highway, priority section Smokovac-Uvač-Mateševo, contains information that is confidential and from which the public is excluded, since its disclosure could endanger the contractual position of the bodies and legal procedures that are in connection with the implementation of the Contract on design of Bar-Boljare Highway, Smokovac-Uvač-Mateševo section no. 01-827/1 from 26.02.2014. ("Official Gazette of Montenegro" No. 54/14) it is necessary that these data be considered within a limited number of authorized entities, exclusively for the needs of the Project and for the purpose for which they are foreseen, all in the interest of economic policy of Montenegro. protection of economic interests of the Investor (the Government of Montenegro represented by the Ministry of Transport and Maritime Affairs) related to the protection of competition and trade secret regarding the intellectual property right, as well as in the interests of performing official duties, especially in connection with consultations within and



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between the authorities regarding defining of opinions, creating official documents and proposing the solution of a case, as well as in relation to the work and decision-making of collegial bodies.

The data contained in documents precisely listed by type in points 1 - 19 in the text of this Decision, arising from daily activities related to the implementation of the Contract on the design and construction of Bar-Boljare highway, Smokovac-Uvač-Mateševo section No. 01 -827/1 of February 26, 2014 ("Official Gazette of Montenegro" No. 54/14) are confidential and they represent a trade secret, as they influence the implementation of the Investor's plans regarding the project, both in connection with implementation of this stage (sub-section), as well as in connection with preparatory activities for implementation of the following stages (sub-sections).

By their nature, defined types of documents represent the intellectual property of the Investor, or trade secret, and contain data that could be used as input and comparative parameters for a comprehensive due diligence analysis related to the preparation, implementation, management, maintenance of other stages (sub-sections) of the Project, due to defining of optimal investment conditions (requirements) to all future potential interested partners, by applying the principle of equal treatment, free competition and non-discrimination and in order to best protect the interests of the Investor (the Government of Montenegro represented by the Ministry of Transport and Maritime Affairs).

According to sub-clause 1.12 of the Contract on the Design and Construction of the Bar-Boljare Highway, section Smokovac-Uvač-Mateševo no. 01-827/1 of February 26, 2014 ("Official Gazette of Montenegro 54/14), the Contractor is obliged to keep the information from the Contract private and confidential and must not publish or reveal it, as well as any details of the Contract in any commercial or technical document, or in communication with media representatives or elsewhere, without the prior written consent of the Investor, while under sub-clause 1.8 of the Contract on the Design and Construction of the Bar-Boljare Highway, Smokovac-Uvač-Mateševo section no. 01-827/1 of February 26, 2014 ("Official Gazette of Montenegro" No. 54/14) it is defined that the Contractor is obliged to issue at the construction site one copy of all communications issued pursuant to the Contract, and the Investor's staff has the right to access this documentation, which means that the Contractual provisions also restrict the number of entities that have the right to access the documentation on the construction site, issued under the Contract.

According to sub-clause 1.9.1 of the Contract on Providing of Services for Supervision of Design of Project Documentation and Execution of Works for the Construction of the Bar-Boljare Highway, section Smokovac-Uvač-Mateševo no. 01-4683/2 of September 11, 2014, it is defined that the Supervising Authority (the Engineer) must not publish any material and/or information according to the Contract without obtaining the prior written consent of the Investor (Client).

Approvals, consents, opinions, resolutions, certificates, instructions, notices, announcements, requests/orders, minutes of meetings, proposals of the Contractor, Engineer (Supervising Authority), Representative of the Investor (Project Manager) are variable categories (current and labour contract administrations) that do not have a final and binding form for the parties and affect the "current contractual positions of the contracting parties in connection with the implementation of the Contract on the design and construction of the Bar-Boljare highway, Smokovac-Uvač-Mateševo section no. 01-827/1 of February 26, 2014 ("Official Gazette of Montenegro" (No. 54/14), Contract on providing consulting services with the selected Supervising Authority in connection with the implementation of the Project No. 01-4663/2 of September 11, 2014 and the Project Management Contract with the Project Manager/ Representative of the Investor No. 01-6099/1 of November 12, 2014, so it is essential that ordinary data be considered within a limited number of authorized entities. It is the information that arises in the process of preparation and harmonisation of views and opinions within one and/or between several entities on the Investor side involved in the process of monitoring the implementation of the Project and its disclosure before the final decision could lead to misinterpretation of the content of the information and seriously endanger the decision-making process, especially if the other contracting party is indirectly familiar with them (the Contractor).



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Technical documentation (text and graphic) required for project design, performing of works, completion and elimination of deficiencies in order to ensure the adequacy, stability and safety of all works on the construction site and all methods works and as-built documentation are technical documentation with a great level of detail which should be available within a limited number of authorized entities, exclusively for the needs of the Project and for the purposes for which it is foreseen, all in order to ensure optimum security aspects of the use of the said capital infrastructure facility.

Disclosing of the criteria for measuring and evaluating subsequent and unforeseen works, notions on claims of the Contractor, notions on the claims of the Investor, notion of the contracting parties on initiation of dispute before the Commission for the settlement of disputes, findings of the Engineer, reports of the entities involved in monitoring the implementation of the Project could have a negative impact on the project management by the investor and jeopardize the interests of the Investor (the Government of Montenegro represented by the Ministry of Transport and Maritime Affairs), if the current contractor (China Contractor Company Ltd./China Roads and Bridge Corporation) were familiar with them, because they also contain the opinions, views, recommendations for dealing with possible amendments and corrections, the Instructions of the Supervising Authority (the Engineer), the Claims of the Contractor and/or the Investor, as well as possible dispute proceedings before the Dispute Settlement Commission, and later even before the Court of Arbitration of the Chamber of Commerce in Zurich (Switzerland), according to arbitrary rules of this Court and by settling the certain damages requests, in accordance with the standard FIDIC procedures for this kind of business and the Contract on the Design and Construction of the Bar-Boljare Highway, Smokovac-Uvač-Mateševo section no. 01-827/1 of February 2, 2014 ("Official Gazette of Montenegro" 54/14).

Decisions of the Dispute Resolution Commission are part of the contractual administration that can be changed in a friendly manner by agreement of the parties or an arbitration decision. Decisions of the Dispute Resolution Commission are also part of the documentation that can be considered in the arbitration proceedings, in which all the relevant documentation is considered confidential, in accordance with the usual arbitration rules. Arbiters are also, inter alia, authorized to open, review and modify any of the Commission's non-dispute proceedings, which means that until the end of the eventual arbitration proceedings, the decisions of the Dispute Resolution Commission have a variable character, and their publication before the final form could lead to a misinterpretation of the content of the information and endanger, both formally and substantially, the possible forthcoming arbitration procedure.

The Audit plan for technical documentation and audit reports of the State Commission for the Audit of Technical Documentation which are not final are variable categories, and their disclosure before the final form could lead to a misinterpretation of the content of the information, and consequently to the wrongful conduct of the Contractor as a Designer in the preparation of the Main Project if it were previously acquainted with them indirectly. Article 7 of the Decision on the appointment of the State Commission for the Audit of Technical Documentation ("Official Gazette of Montenegro" No. 20/15) defines that the work of the State Commission for the Audit of Technical Documentation is considered a business secret. Thus, Article 7 of the Decision on the appointment of the State Commission for Technical Inspection of Works (Official Gazette of Montenegro 30/15) defines that the work of this Commission is considered a business secret and no member of this Commission has the authority to communicate outside the Commission any kind of information related to the scope of the work of the Commission.

The work schedule and the Timetable of Payments defined by it are also variable contract categories until the end of the project implementation, as they represent the Contractor's plan (assessment) of organizational, working and resource structures and all relevant activities that are related to design, production, procurement, on-site works until the completion of the Project, and as such, these documents #B92509



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may be subject to further revision and correction until the completion of the Project, all in accordance with the procedures defined in the Contract on the design and construction of the Bar -Boljare, section Smokovac-Uvač-Mateševo section no. 01-827/1 of February 26, 2014 ("Official Gazette of Montenegro" 54/14). The program of work is a document of the Contractor for whose implementation it is solely responsible and realization of the Time schedule of payments is conditioned by it. Their publication before the completion of the works would cause misinterpretation of the information content.

Requests of the Contractor for issuing the Interim Payment Statement and Interim Payment Certificate itself, as well as the Request of the Contractor for the issuing the final certificate, are variable categories (current and labour contract administration) until the moment of confirmation by the Engineer (Supervising Authority) and payment by the Investor. Their disclosure before the final form (final situation) could lead to a misinterpretation of the content of the information.

Bearing in mind the aforementioned, it is unambiguously established that the disclosure of any document individually listed 1-19 in the text of this Decision would cause adverse consequences for the interest which is of greater importance than the public's interest in knowing the requested information.

Based on the aforementioned, it was decided as in the text of the Decision.

MINISTER
Osman Nurković