

CASE STUDY: CONSTRUCTION OF OBILAZNICE GOLUBOVCI



I INTRODUCTION: The following case study shows the public procurement of the bypass Golubovci, in the Capital of Podgorica. The deal went to an Austrian company „Alpine Bau GmbH“, for the sum of nearly €8 million more than the estimated value of the procurement. At the very start, it was questionable if the contractor is financially able to carry out the works within the planned deadline of one year. Finally, the company went bankrupt and five years later, the work was

done by „Bemax“ from Podgorica. Actually, it turned out that „Bemax“ had been carrying out the work on the bypass from the very first day, although the Austrian company had not shown it as a subcontractor during the public bid.

II: MODIFIED BID OF THE AUSTRIAN COMPANY THE MOST FAVORABLE: In September 2007, the Ministry of Transport adopted the Proposal for Resolving Bottlenecks of the Traffic Network of Montenegro, which included the project of construction of highway M-2, known as the bypass Golubovci.¹ During 2008, the Government was to provide €1 million for the preparation of the project documentation, the Capital of Podgorica would deal with expropriation issues, while the total cost of the work would be €17 million. It was defined that the works would begin October 2008 and end a year later.

	GOVERNMENT	Capital	Transport Directorate
LIABILITY	Project planning	Expropriation	Public procurement
SUM	€1 million	?	€17 million
DEADLINE	2008	2008	2008/2009

Table 1: Government projection for construction of the Bypass Golubovci

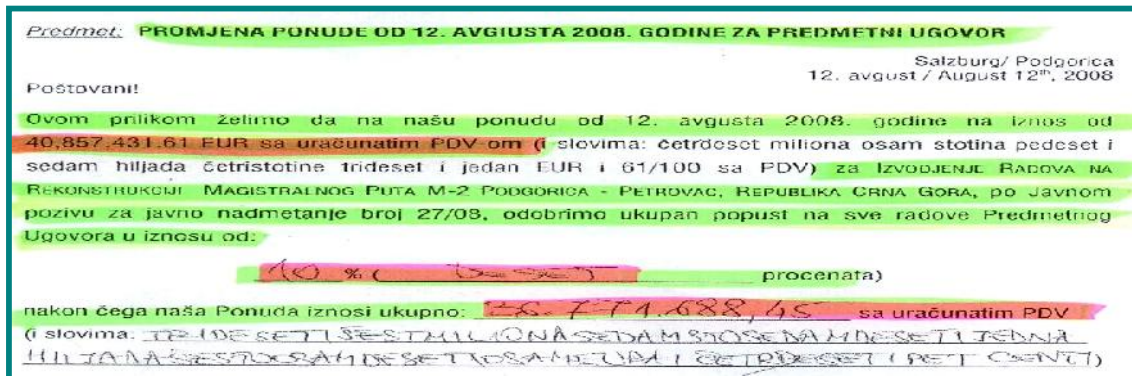
Mid-July 2008, the Transport Directorate called for public bid for construction of the Bypass Golubovci through three phases – Section I from Ulica Vojislavljevica to the junction to the airport, Section II from the junction to the airport to Golubovci and Section III, called the Bypass Golubovci.²

Estimated value of the procurement was €29 million. The plan was to finance it from the budget of Montenegro and the budget of the Municipality of Podgorica, while the deadline finishing the works was 12 months. In addition, the contractor was required an average turnover of at least €20 million in the previous three years in the field that was the subject of the procurement. It was also required to have access to loans and assets sufficient to carry out the works, and at least as high as the bid.

¹ Proposal for Resolving Bottlenecks of the Traffic Network of Montenegro 2007-2009, No. 01-4166/1, dated 20 September 2007.

² Public bid No. 27/08 to the open procurement of the most favorable bid for carrying out works of reconstruction of the highway M-2, Podgorica-Petrovac, dated 18 July 2008.

Three bids were submitted³, and „Alpine Bau GmbH“ from Austria, in addition to the first bid, also submitted the modified version, 15 minutes before the tender was closed. The first offer the company submitted was €40,857,431, while right before the closure, it offered 10 percent discount and the price of €36,771,688.⁴ Out of the total sum, €19,833,806 was proposed for the Section I, €7,794,951 for the Section II and finally €9,514,361 for the Section III. The deadline for finishing the bypass Golubovci stated in the offer was 365 days.⁵



Modified bid of the Austrian company „Alphine Bau GmbH“

The offer of the Austrian company was accepted as the most favorable, so it was granted the deal for €7,771,668 more than originally estimated in the public bid. Responsible persons in the Directorate accepted the offer for construction of the bypass Golubovci at the expense of the state budget, instead of cancelling the tender, which is given as a possibility by the Law on Public Procurements, which lays down that a public procurement process can be cancelled „when the amount of all offered prices exceeds the amount of planned and allocated funds for the particular public procurement.”

III: UNFAVORABLE CONTRACT WITH THE AUSTRIAN COMPANY: The contract on carrying out the works was made on 18 December 2008 at the price of €36,771,688, and the date of commencement of works was set as the date of introduction of the contractor.⁶ The Directorate was obliged to pay the sum within seven years from the date of signing the contract, i.e. €5,253,098 a year, where the first installment is paid six months after the commencement of works, and then every three months.

However, compared to the typical contract form, signed by the Transport Directorate, the contract with „Alphine Bau GmbH“ was amended and it contained a number of disadvantageous provisions. Thus, the provision stipulating that the contractor was due to perform the technical control of the documentation, which was to serve as the basis for the minutes, was completely eliminated. Moreover, it was defined that the five percent guarantee of execution of the contract was to be valid until the works were finished and not until the deal was sealed. Thus, the

³ In addition to the aforementioned bid, there were few more: consortium „Jv Strabag Ag Direktion MI“, Austria and „Tehnopot doo“ from Podgorica offered €49,870;346 with 362-day deadline to finish the works; consortium „POOR Technobau und Umwelt Aktiengesellschaft“, Austria / „POOR Technobau und umwelt AG d.s.d. Poogorica together offered €56,333,091 with 365-day deadline.

⁴ Minutes from bid opening, No. 02-6473/1 dated 13 August 2008 and Records on Review, Evaluation and Comparison of Bids, No. 02-7191/1 dated 12 September 2008.

⁵ Bill of Quantities of „Alphine Bau GmbH“ from Austria

⁶ Contract No. 27/08 on Carrying Out Reconstruction Works of the Highway M-2 Podgorica-Petrovac, No. 01-10510/1 dated 18 December 2008.

Directorate would not cover losses in case of problems during the contract realization, as there was no valid guarantee.

IV: WORKS DELAYED FROM THE BEGINNING, ANNEXES TO THE AGREEMENT SIGNED: The construction works of the bypass Golubovci officially began on 1 April 2009⁷, which means three months after signing the contract, and they were supposed to be finished April of the following year.⁸ However, a month before deadline expiry, the Transport Directorate and „Alpina Bau GmbH“ made the first annex to the contract on 28 March 2010, explaining the situation as a consequence of negative global economic development. The annex prescribed conditions for continuation of the project works, and it also modified the method of financing – the works would be carried out in phases and it would be set out by separate annexes.

Therefore, a year after the introduction of the contractor, when the works were actually supposed to be finished, the contracted parties reviewed the terms of financing the project, which raises doubts that the works had been assigned to a contractor that had not had financial means to finish them within the guaranteed deadline.

Between May 2010 and August 2012, the Transport Directorate and the Capital of Podgorica signed four more annexes which additionally defined their duties in terms of financing the project of construction of the bypass Golubovci.⁹

V: „BEMAX“ TAKING OVER FINISHING WORKS: In October 2013, five years after signing the contract with „Alpine Bau GmbH“, the Government of Montenegro announced that the Austrian company had gone bankrupt and withdrew from the work. Accordingly, the government decided to continue the works in the third phase with the „Bemax“ company, having estimated the value of the works within this phase to €2,644,116 until that moment. It was also announced that the works had not been in the progress at the moment of termination of the contract due to problems of expropriation of the land, but conditions for continuation were subsequently satisfied.¹⁰

U međuvremenu 02.07.2013. godine obaviješteni smo od strane privrednog suda Austrije o pokretanju stečajnog postupka u kompaniji „ALPINE Bau GmbH“, kojim nas stečajni upravnik obavještava da se ova kompanija povlači iz pomenutog ugovora.
Vrijednost ugovorenih radova koje finansira Direkcija za saobraćaj, u skladu sa Aneksom IV Ugovora, iznosi 4.204.573,75 €. Do momenta raskida ugovora izvedeno je radova u vrijednosti od 2.644.116,77 € što iznosi 63% ukupno izvedenih radova.
Radovi se u momentu raskida ugovora nijesu izvodili zbog problema eksproprijacije zemljišta za čije sprovođenje bio zadužen Glavni grad Podgorica.
S obzirom da smo informisani od strane Glavnog grada Podgorice da su se stekli uslovi za nastavak radova, kao i da su sredstva opredijeljena kroz Kapitalni Budžet Ministarstva saobraćaja za ovu namjenu, predlažemo da se, u cilju ubrzanja dinamike realizacije radova na izgradnji *Dionice III*, omogući nastavak radova preko podizvođača radova, kompanije Bemax d.o.o. Podgorica, sa kojima bi se sklopio Sporazum o nastavku i završetku radova do stavljanja puta u funkciju.

Government's decision to assign „Bemax“ continuation of the construction of the bypass Golubovci

On 25 November 2013, the Transport Directorate and „Bemax“ signed the Protocol on continuation of the works. The sum of €1,688,890 would be financed by the Directorate, while the Capital would pay additional €2,609,162. The deadline for finishing the works was not defined.¹¹

⁷ First page of the Construction Log of „Alpine Bau GmbH“, dated 1 April 2009.

⁸ Although the works started in April 2009, the Transport Directorate acquired the construction license as late as 28 December 2009.

⁹ Annex II, No. 01-4611/1 dated 17 May 2010; Annex III, No. 01-7426/1 dated 18 August 2010; Annex IV, No. 01-10354/1 dated 22 November 2011; Annex V, No. 01-6580/1 dated 16 August 2012.

¹⁰ Conclusion of the Government of Montenegro, No. 08-2383/3 dated 24 October 2013 and Information on continuation of construction works of Section III bypass around Golubovci.

¹¹ Protocol on continuation of reconstruction of the highway M-2 Podgorica-Petrovac, Section III: Construction of the bypass around Golubovci, No. 12693/13 dated 25 November 2013.

V: UNCERTAIN IF „BEMAX“ WAS CARRYING OUT THE WORKS FROM THE BEGINNING: According to acquired information, „Bemax“ was involved in the construction of the bypass Golubovci only a few months after the Austrian company had commenced the works. „Alphine Bau GmbH“ commenced the works on 1 April 2009 and in June it signed an agreement with „Bemax“. The same month, „Bemax“ signed an agreement with „Konstruktor Neretva“, a company from Čapljina, to carry out works on the overpass. The same year in July, „Bemax“ signed another contract with the same company from Čapljina, this time regarding works on the bridge.¹²

7.1. UGOVORI O IZVOĐENJU RADOVA
• Ugovor broj 27/08 (01-10510/1) zaključen 18.12.2008.godine između Direkcije za saobraćaj - Podgorica i "Alpine Bau GmbH" - Salzburg.
• Anex I uz osnovni Ugovor broj 01-3233/1 zaključen 26.03.2009.godine između Direkcije za saobraćaj - Podgorica i "Alpine Bau GmbH" - Salzburg.
• Ugovor broj 167 zaključen 05.06.2009.godine između "Alpine Bau GmbH" dio stranog društva Podgorica i "Bemax" d.o.o. - Podgorica
• Ugovor broj 1933/09 zaključen 09.06.2009.godine između "Bemax" d.o.o. - Podgorica i "Konstruktor Neretva" d.o.o. - Čapljina za radove na nadvožnjaku
• Ugovor broj 2490/09 zaključen 24.07.2009.godine između "Bemax" d.o.o. - Podgorica i "Konstruktor Neretva" d.o.o. - Čapljina za radove na mostu

Excerpt from the Report on Technical Inspection of the Phase I

Moreover, in September 2009, „Bemax“ signed an agreement on asphalt delivery with „Crnagoraput“, a company from Podgorica, which raises doubts that it was the company which actually performed works on the bypass Golubovci instead of the Austrian „Alpina Bau GmbH“, which was only a fictive contractor.

VI: BYPASS FINISHED AFTER SIX YEARS: „Bemax“ finished the works in May 2014¹³ and the road was officially opened on 17 May 2014.¹⁴ Therefore, the public procurement was carried out after whole five years, instead of one, and MANS still misses precise information on the total cost of the bypass construction. The Transport Directorate paid €26,555,772 from 2009 to June 2014 for this procurement, while the sum paid by the Capital of Podgorica remains undisclosed.

PUBLIC PROCUREMENT	CONTRACTED DEADLINE	WORKS FINISHED
Bypass Golubovci	April 2010	May 2014

In November 2014, MANS filed a complaint against the former director of the Transport Directorate, Veselin Grbovic, due to a reasonable suspicion that, as a responsible person, he had abused his power and negligently performed his duties during the public procurement process of the construction of the bypass Golubovci through three phases, violating the Law on Public Procurement, as well as the Law on Spatial Development and Construction of Structures.

*Author: MANS Investigation Center
Podgorica, October 2015*

¹² Information contained in the Report of the Commission for technical inspection of works on the Section I, dated 28 February 2011.

¹³ Last page of the Construction Log of „Bemax d.o.o.“ Podgorica, dated 15 May 2014.

¹⁴ Article in the daily „Pobjeda“, dated 18 May 2014.