Roads to ruin

A massive road-building scheme in Poland has hurt contractors. Who’s to blame?

BY CHRISTIAN LOWE AND DAGMARA LESZKOWICZ
MSZANA, POLAND, OCTOBER 24, 2013
When Poland started handing out billions of euros worth of contracts for a wave of road-building five years ago, everyone was meant to benefit.

Poland would bring its decrepit transport system into the 21st century, European construction firms would win contracts at a time of recession, and the European Union, whose cash helped fund the work, could point to how it was helping.

Poland got its roads, for the most part. But in many other ways the enterprise, one of the biggest construction projects in Europe, went seriously wrong. Several contractors are in legal battles to recover billions of euros they say Poland owes them. Dozens of Polish companies are in bankruptcy, and multinational firms have blamed losses on the Polish contracts turning sour. Six European governments have complained to Poland about the way their companies have been treated. The European Commission is investigating what went wrong.

Here’s the twist: This is not so much a story of corruption as of cost-cutting zeal. Poland stuck to its budget and the prices agreed in its contracts. That was the problem. In an industry where firms routinely bid as low as possible and costs routinely overrun, Poland frequently refused to budge on cost. In its drive to keep costs down, it also ignored warnings - including some from independent engineers hired by the state - that designs and plans needed to be changed.

The drive to economise was repeated on dozens of projects, industry groups and construction company executives say, and left many involved in the projects struggling. One of the biggest losers was Alpine Holding GmbH, the Austrian unit of Spanish group FCC, which entered bankruptcy proceedings in June, becoming Austria’s biggest corporate collapse since World War Two.

A project that should have been a bonanza for Europe has turned into “a slaughter house for Polish and European firms,” Jarosław Duszewski, a former Alpine executive, wrote to the head of the Polish state roads agency in June this year. A spokesman for FCC declined to comment.

Five other firms have told Reuters they are still in dispute with the road agency over payment: Austria’s Strabag, the Polish unit of Germany’s Bilfinger, Ireland’s SIAC, a joint venture of Ireland’s Sisk and Roadbridge called SRB, and Budimex, a Polish unit of Spain’s Ferrovial. All but one said they had filed suits against the state road agency which were unresolved. Bilfinger’s subsidiary said it was seeking to resolve the dispute out of court.

Polish Prime Minister Donald Tusk has defended his officials, and said Poland will not bow to foreign pressure. His office referred reporters to the transport ministry, which defended the agency, saying it had acted within the terms of its agreements with contractors.

“RUSSIAN ROULETTE”

The problems relate to contracts awarded from 2008, when Lech Wałęsa, a former state auditor, was appointed as head of the road agency, known by its Polish acronym HARD BARGAINS: Alpine Bau came into conflict with road agency head Lech Wałęsa, below, when he refused to budge on changes to a contract. REUTERS/HEINZ-PETER, REUTERS/WOJCIECH SURDZIEL/AGENCJA GAZETA

$51 billion

Value of EU’s infrastructure plan for Poland

Source: European Union
GDDKiA. Witecki was put in the job with a brief to get the best possible value just as European Union spending on Polish roads was about to reach an all-time peak. Roads were part of a 37.56 billion euro ($51.37 billion), seven-year EU infrastructure programme for Poland – the European Union's biggest ever development programme in a single member state.

Witecki followed standard industry practice: His agency would announce a tender for a road project and contractors would bid. Usually, the winner would be the firm that offered to build the road for the lowest price.

But in two crucial aspects, Poland’s system differed from the way contracts are run in the rest of Europe, said Frank Kehlenbach, director of industry lobby group European International Contractors. First, executives from several construction firms have said, the Polish agency would in many cases not clarify project details when asked. That left companies with a choice: Take a risk and bid on incomplete information, or walk away.

“In Germany or other European countries you say: ‘I have a request for clarification.’ Then you have a meeting and it is clarified for all tenderers,” said Kehlenbach, who has worked for the organisation since 1997. “In Poland ... they say: ‘If you have a problem with the tender documents, do not submit the bid.’” The transport ministry said companies which believe they have inadequate information can appeal to an independent adjudicating body, but it had no sign any company had done that.

Secondly, when contractors who had begun work encountered unforeseen problems – World War Two bombs on the site, say, or a design flaw – and needed to adjust the project costs, the agency would consistently reject any change, say executives with construction firms who have dealt with the GDDKiA. Normally when a problem arises, Kehlenbach said, the contractor and client sit down together and clarify the cost. But the Polish authorities did not negotiate on such matters, and instead referred contractors to the courts.

“I have never experienced anything like what happens in Poland,” he said.

Jan Biłaszczuk, a Polish engineer working as a consultant for Alpine on one project, told a site meeting in May 2013 that the dynamic between contractors and the road agency was “a game of Russian roulette over project costs.” GDDKiA regularly withheld payment on the grounds contractors were not delivering, and made several firms forfeit the multi-million euro bonds they had lodged as a guarantee, according to GDDKiA’s own records.

Witecki told Reuters his agency did show flexibility on contracts, approving modifications in many cases, but only when this was justified. He said he and his officials acted in line with Polish law, and only tried to enforce the contracts which the contractors themselves had signed. He said he had delivered thousands of kilometres of good quality highways, and provided good value for taxpayers.

A BRIDGE TOO FAR
An unfinished motorway bridge at Msza, near Poland’s border with the Czech Republic, stands as one example of the road agency’s tough approach.

When the design for the bridge was being drawn up, it was intended to be a bold architectural statement fitting for a newly-confident Poland. The ravine the bridge had to span isn’t wide, or especially deep. In fact the brook at the bottom of it is only about four metres across – the length of a small family car.

But there were problems from the start. Most modern motorway suspension
bridges are made up of concrete slabs supported on two sides by wire cables hung from towers. This one had towers and a set of wire cables running down the middle of the roadway only.

The man hired by GDDKiA to design it, Stefan Jendrzejek, has a long track record of building road bridges in Poland. He believed that the bridge could withstand the additional stresses resulting from the unusual design, but there would be little margin for error.

In 2007, Alpine Bau, the construction arm of Austria’s Alpine Holding, won a tender to build the bridge and a stretch of the A1 motorway either side of it. The company had already completed high-profile construction projects in Poland, and in 2009 would be picked to build the country’s new national soccer stadium.

On the motorway contract, Alpine said it could not proceed unless the road agency changed the project design; GDDKiA said Alpine was not fulfilling its obligations, and the contract was torn up in 2009. It was put up for tender again a year later and Alpine Bau won it again, in August 2010 – a week after the government agency had written to ask the firm to clarify if its price included all the work on the project, including the bridge.

From then on, more than 300 pages of official documents exchanged between the agency and the builder record how the project descended into recriminations between Witecki’s road agency and the contractor.

According to the documents, which Reuters has seen, three highly qualified engineers who were or had been employed by the agency said the design of the bridge was unproven and too ambitious. But the agency disagreed with most of them. It took the view that the contractor was raising problems with the design to excuse its failures and inflate costs, the documents show.

By late 2011, the bridge was taking shape. But Alpine’s engineers discovered that a section of the concrete span had

---

**Roadrunner**

Poland, which joined the European Union in 2004, has received billions of euros from the EU to build new motorways.

**TOTAL MOTORWAY**

Length in kilometres

<table>
<thead>
<tr>
<th>Country</th>
<th>Length</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spain</td>
<td>14,554</td>
</tr>
<tr>
<td>Germany</td>
<td>12,845</td>
</tr>
<tr>
<td>France</td>
<td>11,412</td>
</tr>
</tbody>
</table>

**EU ROAD FUNDING**

In millions of euros (2000-2013)

<table>
<thead>
<tr>
<th>Country</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poland</td>
<td>17,741</td>
</tr>
<tr>
<td>Spain</td>
<td>8,558</td>
</tr>
<tr>
<td>Germany</td>
<td>4,636</td>
</tr>
<tr>
<td>France</td>
<td>550</td>
</tr>
<tr>
<td>U.K.</td>
<td>330</td>
</tr>
</tbody>
</table>

**AVERAGE COST**

In thousands of euros per 1,000 sq. m of road (2000-2013)

<table>
<thead>
<tr>
<th>Country</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poland</td>
<td>€445</td>
</tr>
<tr>
<td>Spain</td>
<td>€496</td>
</tr>
<tr>
<td>Germany</td>
<td>€287</td>
</tr>
<tr>
<td>France</td>
<td>N.A.</td>
</tr>
<tr>
<td>U.K.</td>
<td>N.A.</td>
</tr>
</tbody>
</table>

Sources: Eurostat; European Court of Auditors.
crumbled at the point where some supporting cables were anchored.

One expert the agency had hired, Professor Kazimierz Flaga, proposed adding extra ribs to strengthen the concrete span – advice which the agency did not follow, the documents show. Flaga declined to comment for this article.

The road agency said in a statement to Reuters in July this year: “GDDKiA follows expert advice arising from in-depth analyses.”

In a document written this year and seen by Reuters, Jendrzejek wrote that his concept was sound. He did not respond to a request for comment.

By early 2012, cracks had appeared in one of the concrete sections on the underside of the bridge. The regional construction inspectorate stepped in and ordered a halt to the work. The inspectors demanded fixes.

In July 2012, Flaga and three other engineers wrote to the road agency to say they had reservations about the proposed fixes. They were still concerned the bridge would not be strong enough. The road agency rejected the alternatives they suggested and disputed the content of the letter.

Witecki told Reuters the principal reason for the problems with the contract was not the design of the bridge but mistakes by Alpine. He said the price it offered to carry out the contract was unrealistically low.

Despite the disputes, on July 20, 2012 Alpine Bau signed a contract with GDDKiA to carry out corrective work and complete the bridge. According to Duszewski, the former Alpine Bau executive, the company was by this stage trapped: If it refused to sign the new contract it would not receive the millions of euros it was owed for work already done.

Problems soon resurfaced: Alpine Bau complained about missing plans and components.

“GUN TO THE HEAD”

Things were taking a toll on Alpine Bau financially. From the early days of the contract, GDDKiA withheld interim payments to the firm. The transport ministry said it withheld payments in line with the contract, which stipulates payments can only be made when work in the schedule is completed.

In June 2012 the road agency also called in a bond worth more than 13 million euros that Alpine Bau had lodged with a bank as security in case it failed to meet the terms
of the contract. Then in February this year it wrote to the bank, saying it wanted to call another bond, also worth about 13 million euros. A few days later, it wrote to the bank again, asking it to postpone - a process it repeated six times, before it finally claimed the cash in May this year.

That, said Duszewski, the former Alpine Bau executive, felt like a tactic to keep the company under constant financial pressure. He said it was “like a gun to the head.”

GDDKiA said in a statement to Reuters it had postponed calling in the cash to show “good faith” while there was a chance of reaching an agreement.

On May 14, Alpine Bau announced it was pulling out, claiming the GDDKiA’s decision to call the bond was proof the agency was not interested in a constructive solution, which the agency disputes. The following month, Alpine Bau entered insolvency proceedings. A week later, the parent group, Alpine Holding GmbH, followed suit.

In its statement, GDDKiA said it had shown flexibility with Alpine Bau, for example paying its sub-contractors directly when it was having financial problems, and bringing forward payments to Alpine. It said it worked successfully with many contractors, but the onus was on them to make sure that they bid realistically and carried out the work responsibly.

“THE STATE IS RESPONSIBLE”

In July, an alliance of Polish construction industry lobby groups wrote to the Polish government accusing the road agency of using its power to wreck contractors.

“The state is responsible for the bankruptcy of hundreds of construction companies and for the army of thousands of unemployed Poles who until recently were employed by the construction industry,” the letter said.

In June the ambassadors to Poland of Austria, France, Germany, Ireland, the Netherlands and Portugal wrote a letter of complaint to deputy prime minister Janusz Piechocinski. The letter, a copy of which was seen by Reuters, said the government should intervene “to avoid negative implications to the image of Poland’s business environment.” The value of claims against the roads agency lodged by contractors with Polish courts stands at about 2.35 billion euros, according to the letter.

Shirin Wheeler, a spokeswoman for the European Commission in Brussels, said it was looking into whether the contracts were managed in line with EU procurement rules. The Commission has not given details of the investigation, but diplomats say it is linked to contractors’ complaints about the road agency.

On a weekday afternoon in August, the only sign of construction work at the still-unfinished Mszana bridge was a lone man in a high-visibility jacket pacing around, and a forklift truck that delivered a water tank. The motorway between Poland and the Czech Republic is blocked at the bridge, forcing vehicles to make a detour, squeezing through narrow country roads.

Additional reporting by Jose Elias Rodriguez in Madrid, Georgina Prodhan in Vienna, Jack Watling in London and Adrian Krajewski in Warsaw

Edited by Simon Robinson and Sara Ledwith

FOR MORE INFORMATION
Christian Lowe, Bureau Chief, Central Europe and the Balkans
christian.lowe@thomsonreuters.com
Dagmara Leszkowicz
Correspondent, Poland
dagmara.leszkowicz@thomsonreuters.com
Sara Ledwith, Assistant Enterprise Editor
sara.ledwith@thomsonreuters.com
Michael Williams, Global Enterprise Editor
michael.j.williams@thomsonreuters.com