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Governor McCrory
North Carolina Office of the Governor
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October 7, 2015

Re: NCDOT Contract with I-77 Mobility Partners (Cintra Infraestructuras) is invalid due to pending lawsuits, investigations, and convictions against Ferrovial (Cintra's parent) and its subsidiaries. The lawsuits were not disclosed in full and some were omitted and misrepresented during the bidding process.

Also, the Louis Berger Group (LBG), the Lead Design Firm on the project has been debarred by the World Bank until February 2016 and it continues to be debarred by the Asian Development Bank (since 2006). Additionally, LBG has been accused and convicted of major fraud and corruption by the US Attorney's Office as reported by the FBI. The firm wasted millions of dollars in tax payer money and put our troops in harm's way in Afghanistan.

Please cancel the contract for the I-77 HOT lanes and investigate the NCDOT's proposal process for corruption as well.

Dear Governor McCrory,

I am writing to you because you stated during the televised 2012 gubernatorial debate that you wanted to eliminate corruption. The contract signed by the NCDOT with Cintra Infraestructuras (A.K.A I-77 Mobility Partners) is invalid due to its undisclosed corrupt past and should be cancelled immediately. There are a plethora of lawsuits, fines, and convictions against Ferrovial Agroman, the construction division of Ferrovial S.A. (Cintra's parent/I-77 Mobility Partners) and Cespa, its waste management subsidiary as well the Louis Berger Group.

On June 1, 2015, I wrote a letter to Attorney General Roy Cooper detailing Ferrovial's corruption. Shortly thereafter, I discovered even more corruption associated with the I-77 HOT lanes project. I then wrote to Inspector General Mary Morton on July 12, 2015. I included criminal information about the Louis Berger Group that is detailed on the FBI website along with information from the World Bank and articles from various online digital publications.

Just recently, I returned from Spain, where I have discovered more lawsuits against Ferrovial along with court documents detailing these legal proceedings. I teach Spanish at a large local university and I have been travelling to Spain since 1986.

In addition to cancelling the contract, I have concerns about the NCDOT's proposal process and their lack of transparency. I will discuss this at the end of the letter.

Governor McCrory, I would like to highlight the following information in the contract before reviewing some of the disturbing lawsuits, convictions, and problems associated with both organizations that invalidate the HOT lanes contract:

According to page 879 Exhibit 19-B of the Form of the Financial Close Certificate of the Comprehensive Agreement signed by the NCDOT and I-77 Mobility Partners (Cintra/Ferrovial Agroman) on June 26, 2014, the following statements must prevail in order for the contract to be valid. (Also, the recent financial closings (May 2015) needed to take this information into account and any new pending litigation needed to come forward and be disclosed)

Note: I-77 Mobility Partners (Cintra) is the Developer.

8. There is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, the CA Documents, the Initial Funding Agreements, the Project Trust Agreement, the Security Agreement or the Lender's Direct Agreement, or which challenges the authority of the Developer official executing the CA Documents, Initial Funding Agreements, the Project Trust Agreement, the Security Agreement or the Lender's Direct Agreement; **and Developer has disclosed to NCDOT any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware. [Note: If any such action, suit, investigation or litigation is pending or served, disclose the nature and circumstances of such action, suit, investigation or litigation]**

Here are cases that invalidate the contract:

Case #1: Antitrust Scandal (A.K.A. the GARBAGE CARTEL). Ferrovial (Cintra's parent) formed a cartel through its waste management subsidiary and was involved in illegal anti-competitive activities for over a decade.

Cespa (Ferrovial subsidiary) received one of the highest fines for breaking Spain's antitrust laws and colluding in the waste management business for over 10 years.¹

In a press release dated January 26, 2015, the Comisión Nacional de los Mercados y la Competencia (CNMC), Spain's antitrust enforcer announced that 39 companies and 3 trade associations were fined 98.2 million euros. Cespa (Ferrovial) was fined **13,616,717 euros** (almost 15 million dollars) for its illegal, anti-competitive activities or **14% of the fines paid by all 39 companies and the trade associations**. This was the 4th highest fine imposed².

Journalist Baltasar Montaña of the digital publication *Vozpópuli* explains exactly how this "garbage cartel" was rigged³:

¹ Gurrieri, Vin. "Spain Fines Waste Management Companies \$111 Million for Cartel," *Law 360*, January 28, 2015

² *Notas de Prensa*, (Press Release) CNMC, "La CNMC sanciona con un total de 98.2 millones de euros...", Jan. 26, 2015, 6 pgs. From Spain's Antitrust enforcer.

³ Montaña, Baltasar. "Así amañaba el cartel de la basura: Yo presento la oferta y si gano otorgaré a Urbaser y Cespa un 20%." *Vozpópuli*, January 28, 2015.

The CNMC went through thousands of emails from companies like Ferrovial, FCC, ACS, and Sacyr in which they divided contracts, clients, territories, offered low prices and they expelled possible competitors among other illegal practices. In addition, such statements as “I present the offer and if I win, I will grant Urbaser and Cespa (Ferrovial) 20%” were found in documents and emails.

A 198 page document dated January 8, 2015⁴ (I have the PDF file) details the research process that was done through the Investigation Department of the former CMC (Comisión Nacional de la Competencia) which later became part of the CNMC (Comisión Nacional de los Mercados y la Competencia). Here are some highlights of this extensive document:

- In an email from Cespa (Ferrovial subsidiary) from May of 2010, it states that Saica Natura (Cespa’s competitor) had renewed its waste management contract with Puleva Sevilla (Puleva’s location in Sevilla, Spain). Upon seeing the difference in price between Cespa (Ferrovial) and Saica in Sevilla, the Assistant General Director of Puleva decides to ask Saica to bid on Puleva’s location in Granada. Cespa is concerned about Saica’s low prices: “they are going to destroy our bid with Puleva Granada.” The emails says: **“I propose speaking at the director level at Saica and agreeing”**⁵:
 - “To give up Sevilla and to not counteroffer”.
 - “They issue an offer of coverage to us in Granada”
 - “In Granada, we will hand over to it (Saica) cardboard (cartón) at market prices”.
- From **1999-2013**, Cespa/Ferrovial (Ferrovial purchased 100% of Cespa in 2003) was engaged in **illegal, anti-competitive activities** in the industrial waste management sector in Catalonia.⁶ Cespa signed **non-compete agreements and non-aggression pacts** as well as sharing sensitive contractual information about prices offered and terms of the contract. These illegal activities occurred in Andalusia as well from 2009-2013.⁷
- From 2011-2013 Cespa, Urbaser, FCC, and Valoriza engaged in anti-competitive practices in the Municipality of Madrid where they signed agreements about dividing contracts and working together .
 - On November 20, 2012, FCC, Urbaser, and Cespa (Ferrovial signed an anti-competitive illegal document to agree in shared/joint participation entitled, “ACUERDO DE PARTICIPACIÓN CONJUNTA” (Joint Participation Agreement). In this agreement, FCC shows its intention to present an offer and if they win, they will give Cespa and Urbaser 20%.⁸

4 RESOLUCIÓN (Expte. S/0429/12 RESIDUOS), report dated January 8,2015, by la Comisión Nacional de los Mercados y la Competencia (CNMC), 198 pages. (Extensive report by Spain’s antitrust enforcer on the cartel formed by Cespa/Ferrovial in the waste management sector)

5 RESOLUCIÓN (Expte. S/0429/12 RESIDUOS), p. 75

6 Ibid, p.26

7 Ibid, p.27

⁸ RESOLUCIÓN (Expte. S/0429/12 RESIDUOS), report dated January 8,2015, by la Comisión Nacional de los Mercados y la Competencia (CNMC), pg. 43.

Contract Invalid Due to Non-Disclosure: Question 1 from the FORM C Certification of the RFQ document states:

Question 1: Has the firm or any affiliate (referring to parent company and subsidiaries at any tier) or any current officer thereof, been indicted or convicted of bid **(i.e., fraud, bribery, collusion, conspiracy, antitrust, etc.)** or other contract related crimes or violations or any other felony or serious misdemeanor within the past 10 years?

Cespa (Ferrovia's subsidiary) was fined for collusion and antitrust activities by Spain's National Commission for Markets and Competition (CNMC) in a resolution dated January 8, 2015. Cespa offices were raided on **July 24-25, 2012 and again on July 4, 2013.** Therefore, when Ignacio Vivancos signed the NCDOT's FORM C Certification on November 26, 2013, he **should have disclosed these investigations.** After all, the last question of the RFQ is question 8. It states:

Question 8: With respect to Questions 1-7 above, if not previously answered or included in a prior response on this form, is **any proceeding, claim, matter, suit, indictment, etc. currently pending against the firm** that could result in the firm being found liable, guilty or in violation of the matters referenced.....?

The NCDOT FORM C Certification documents were completed in 2012, 2013, and 2014. These disclosure documents **required** that Cintra complete information on its parent and all subsidiaries. **They did not complete or disclose any information on Cespa.** Naturally, the box in **question 8 should have been checked as "yes"**. Once again, the entire company knew about the investigations when their offices were raided in 2012 and 2013.

Case #2: Cespa fined by the CNC (Comisión Nacional de Competencia- now the CNMC) in 2010 for illegal market sharing in the health care waste management sector. A history of fines and many years of antitrust violations and collusion.

On September 11, 2015, the Spanish Supreme Court (Tribunal Supremo) confirmed the sanction that was imposed by the CNC (National Commission for Competition-Spain's Antitrust enforcer) on January 18, 2010⁹. The antitrust enforcer originally **fined Cespa 2 million euros** for establishing UTEs (temporary joint ventures) with Consenur (fined 4.4 million euros) and Interlun (fined 445,000 euros) with the object and effect of nullifying the competition in the Castilla-La Mancha Community, reducing it (competition) in Valencia, and continuing to share clients in Catalonia. An additional fine of 600,000 euros was imposed upon Cespa for excluding the company Athisa from the market.¹⁰

Although the National Court reduced Cespa's fine to 569,925 euros in the healthcare waste management sector, the damage had already been done to the taxpayers, government municipalities,

⁹ Recurso Casación núm. 228/2013, Tribunal Supremo. Sala de lo Contencioso, September 11, 2015, 29 pgs. Supreme Courts confirms anti trust violations and sanctions reported by CNMC.

¹⁰ Resolución C.N.C. (National Commission for Competition), January 18, 2010.

and the competition. The Supreme Court did not accept Cespa's appeal which further served to confirm the sanction.¹¹

In the 29 page Supreme Court document dated September 11, 2015, it also notes that Cespa and Consenur jointly agreed not to win in the Extremadura region of Spain. This facilitated the awarding of the contract to Interlun¹².

Contract Invalid Due to Non-Disclosure:

Cintra's failure to disclose the fines that were imposed by the CNC on January 18, 2010 as well as the National Court's sentencing of Cespa invalidates the contract. On November 26, 2013, Cintra's representative Ignacio Vivancos **should have checked the "yes" box in question 1:**

Question 1: Has the firm or any affiliate (referring to parent company and subsidiaries at any tier) or any current officer thereof, been indicted or convicted of bid **(i.e., fraud, bribery, collusion, conspiracy, antitrust, etc.)** or other contract related crimes or violations or any other felony or serious misdemeanor within the past 10 years?

Cintra's lack of disclosure is blatant and **it invalidates the contract**. As previously mentioned, on October 15, 2012, Spain's National Court confirmed the CNC's sanction and fined Cespa 569, 925 euros for engaging in collusion and the previously outlined antitrust violations in the healthcare waste management sector.¹³

Case #3 Major case of corruption in Galicia: Two Cespa executives arrested: Contract invalid due to non-disclosure of pending investigation.

Cespa, Ferrovial's waste management subsidiary is **currently involved** in one of the worst cases of corruption in Galicia, Spain.

On February 18, 2014 , the newspaper *La Voz de Galicia*, announced that 5 people were arrested including 2 employees from Cespa (Ferrovial's subsidiary) on charges of bribery, document falsification, and corruption. This was called "Operación Patos" and it is considered one of the worst cases of bribery in the province of Galicia. Many government municipalities were involved including Nigrán, Santiago, Ourense, Ponteareas, Pontevedra, and Vigo¹⁴.

On September 30, 2015, the online publication *Economíadigital*, noted that Cespa is a headache for Rafael del Pino's group (Rafael del Pino is the chairman and largest shareholder of Ferrovial). The firm is at the epicenter of Operación Patos (Operation Patos) and it is a leader in illegal pricing

¹¹ X.R.M. "Cespa, epicentro de la "Operación Patos," líder en pactos ilegales de precios." *Economíadigital*. September 30, 2015.

¹² Recurso Casación núm. 228/2013, Tribunal Supremo. Sala de lo Contencioso, September 11, 2015, 29 pgs.

¹³ Número Recurso 204/2010, Audiencia Nacional (National Court), Sala de lo Contencioso, October 15,2012, 14 pgs.

¹⁴ Torres, Mónica,et. Al., "Cinco detenidos por corrupción tras registros en Nigrán, Santiago, Ourense, Ponteareas, Pontevedra, y Vigo." *Voz de Galicia*, February 18, 2014.

agreements. A total of 51 suspects are involved in this massive bribery and corruption case including local politicians across the province of Galicia¹⁵.

Contract Invalid Due to Non-Disclosure:

Since these 2 arrests occurred in February of 2014, it should have been disclosed on the forms that were completed on March 13, 2014 by Gonzalo Lopez-Aranda Robles, Cintra's Authorized Representative. There were no documents completed for Cespa on this date. Oddly enough, the NCDOT completely changed the form that was used in 2014. They switched to the FORM C Responsible Proposer and Major Participant Questionnaire. The box on question c directly below should have been checked "yes" by Gonzalo Lopez-Aranda Robles:

Question c (on 2014 FORM C Responsible Proposer and Major Participant Questionnaire):
Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law..

This huge arrest and corruption scandal was widely publicized in all the major Spanish newspapers. There is even a youtube video of the arrest. **Not disclosing** such a huge corruption case certainly **invalidates the contract.**

Case #4: Political Bribery: One of worst cases in Spain in which Ferrovial is at the heart.

Case of Ferrovial Agroman bribing CDC Political Party in Barcelona, Spain in order to be awarded over 1 billion euros worth of public contracts.

The Palau Case is considered one of the largest cases of bribery in Spain in recent years (top 10). Ferrovial Agroman pretended to be a sponsor of the arts and they funneled money into the Palau de la Música concert hall in Barcelona. In a 37 page court document dated June 14, 2013 in Barcelona (I have this document from Barcelona in a PDF format), Attorney Emilio Sánchez Ulled (from the Anti-Corruption and Organized Crime division of the Ministry of Justice) details how Ferrovial paid over 6.6 million euros in "illegal commissions" to "individuals with sufficient political influence on the agencies in charge of awarding large-scale public contracts." **This includes the Line 9 Metro project worth 890,000,000 and the City of Justice (Barcelona) project that is estimated at around 263,035,900 euros¹⁶.**

The Palau Case is so notorious and well known that it is also discussed in the newest Spanish book on the bookshelves in Spain entitled *El Fango: Cuarenta Años de Corrupción en España (The Mud: 40 Years of Corruption in Spain)* by Baltasar Garzón. Mr. Garzón had been a judge for over 30 years in Spain's National Court, the Audiencia Nacional. He has also been credited with bringing down and arresting Chile's dictator Augustine Pinochet.

¹⁵ X.R.M. "Cespa, epicentro de la "Operación Patos," líder en pactos ilegales de precios." *Economíadigital*. September 30, 2015.

¹⁶ Diligencias Previas núm. 3360/2009, Juzgado de Instrucción núm 30 de Barcelona, Emilio Sánchez Ulled and found in *El País*, June 14, 2013

Mr. Garzón highlights the 47 page “auto” (decree, writ) in which the judge determines and concludes that the “final destination of the money had nothing to do with the cultural institution.”¹⁷ I discovered this document in Spain and I have it in PDF format.

This judicial writ/decree (auto) highlights the modus operandi of this illegal operation in which Ferrovia is at the epicenter. On July 12, 2013, the judge concludes that “Ferrovia Agroman paid, as a general rule, a commission of 4% of the total of each public work awarded and of this 4%, 2.5% was assigned to the CDC (political party in Barcelona) and 2.5% went to Feliz Millet (the director of the Palau) and Jordi Montull as intermediaries.”¹⁸

Even the Corruption Research Center in Budapest wrote about Ferrovia in its report “Mapping High Level Corruption Risks in Spanish Procurement”:

Ferrovia (f) is the main company implicated in this case for paying commissions of 5.1 million euros to the political party CDC. Doing so, Ferrovia ensured it will be awarded two of the most important current contracts in Barcelona: the infrastructure for the Department of Justice of the Catalan Region and the construction of line 9 of the underground.¹⁹

Contract Invalid: Cintra’s Misleading Information on FORM C Certification (2013) and lack of disclosure.

On November 26, 2013, Cintra/Ferrovia stated on question 1 of the Form C Certification that “the judge was investigating whether part of such money (the possible embezzlement of money from the Palau de la Musica by its chairman) might have been put aside to influence the award of public contracts by the Catalan Regional Government to Ferrovia Agroman.”

This is a completely false statement since the judge had already concluded on July 12, 2013 that Ferrovia paid illegal commissions for a period of almost 10 years (2000-2009).

The money arrived at the CDC in 3 ways: 1. Cash disbursements to CDC treasurers Carles Torrent and Daniel Osácar (2000-2007) 2. False documentation (2004-2009). Five companies charged Palau for nonexistent work or services. 3. There was an agreement between Palau and the Trias Fargas Foundation.²⁰

The Palau Case was reopened again to order the investigation into more crimes. Finally, on May 28, 2015, on the same evening that business leaders in Cornelius, NC joined forces at the Waltrip Racing World in Cornelius, North Carolina to strategize about fighting the tolls, all the major Spanish newspapers announced that the judge of the Palau case once again concluded that the CDC earned illegal commissions from Ferrovia. Pedro Buenavertura and Juan Elizaga, two ex-Ferrovia

¹⁷ Auto de conclusion de la instrucción e incoación de procedimiento abreviado. July 12, 2013, Juzgado de Instrucción n. 30, diligencias previas 3360/2009-D

¹⁸ Ibid.

¹⁹ Gamir, Alejandro. “Mapping High-Level Corruption Risks in Spanish Public Procurement.” *Corruption Research Center Budapest*. Budapest, Hungary. February 2015.

²⁰ Auto de conclusion, July 12, 2013, p.17-18.

executives are still “imputados” (suspects/accused) despite the fact that the defense tried to get them exonerated²¹.

Case #5 Bankruptcy of previous Cintra toll roads not disclosed.

In September of 2014, ITR Concession Co. LLC (Indiana toll road), owned by Cintra (Ferrovial subsidiary) and Macquarie Group LLC. filed for **Chapter 11 protection in the U.S. Bankruptcy Court**. According to the Wall Street Journal, “the 58-year-old road, which runs across Indiana between the Ohio Turnpike and the Chicago Skyway, has struggled for years with a heavy debt load and lower-than-expected traffic.”²²

According to an article written by Terri Hall in the Examiner, “When Cintra and Macquarie acquired the tollway, they immediately doubled the toll rates. The troubled road has failed to attract enough traffic to repay its \$5.8 billion in debt still owed on the project. It shouldn’t surprise anyone that the road is in bankruptcy when they doubled the cost to use it.”²³

This bankruptcy information is very disturbing for our HOT lanes project. Banker Ray Duncombe states: “The real kicker is that when the toll operator decides that they can’t make enough money running the toll lanes, North Carolina is on the hook to pay 80% of the outstanding debt of the toll lanes. That debt will remain over \$300 million for the first 15 years of the project”.²⁴

The project will fail. Duncombe notes, “in the first year of operation the I-77 toll lanes would need to take in \$34 million (!!!) just to break even. In the second year, that number climbs to \$41 million.” This is impossible since “Miami and Houston only take in \$15, and \$9 million in toll revenue a year respectively.”²⁵

In addition, on October 19, 2012, Ferrovial and the companies which manage the AP-36 tollway in Spain agreed to request a judicial declaration of insolvency according to Ferrovial’s statement on its own website. Ferrovial owns 55% of this consortium. According to Ferrovial’s investor relations, “the AP-36 project has been directly affected by external factors (substantial reduction in forecasted traffic, economic recession or increased capacity in alternate routes) which have made the impossibility of honouring various payment obligations with financial entities imminent.”²⁶

²¹ EFE, “El juez del caso Palau concluye que CDC cobró comisiones de Ferrovial, *El Mundo*. May 28, 2015.

²² Randazzo, Sara and Fitzgerald, Patrick. “Indiana Toll Road Operator Files for Bankruptcy.” *Wall Street Journal*. September 22, 2014

²³ Hall, Terri. “Cintra, Macquarie file bankruptcy on the Indiana Toll Road.” Examiner.co. September 23, 2014.

²⁴ Duncombe, Ray. “10 Things you don’t know about the toll lanes planned for I-77 North.” Charlotteagenda.com. August 11, 2015.

²⁵ Ibid.

²⁶ Ferrovial Investor Relations. “The Companies which manage the operation of the AP-36 Ocaña-La Roda tollway have agreed to request a judicial declaration of insolvency.” October 19, 2012. Ferrovial website.

Contract Invalid: Cintra Infraestructuras has omitted these previous bankruptcies in the disclosure documents. Question 2 from the FORM C Certification of the RFQ document states:

Question 2: Has the firm or any affiliate (referring to parent company and subsidiaries at any tier) ever sought protection under any provision of any bankruptcy act within the past 10 years.

On November 26, 2013, Ignacio Vivancos, the authorized representative from Cintra needed to disclose the bankruptcy of the AP-36.

Additionally, Gonzalo Lopez-Aranda Robles did not disclose the Indiana toll road's pending bankruptcy on the March 13, 2014 documents.

NCDOT completely changed the forms and this question was omitted. The 2014 FORM C Responsible Proposer and Major Participant Questionnaire does not contain any question referring to bankruptcy. This switching of documents is suspicious. In any case, the bankruptcy of the toll road in Spain needed to be disclosed on question 8:

Question 8: With respect to each of Questions 1-7 above...is any proceeding, claim, matter, suit, indictment, etc. currently pending against the firm..

The "yes" box should have been checked because the state and condition of the Indiana toll road on March 13, 2014 at a minimum was considered a "matter" that could lead to bankruptcy. The writing was on the wall as early as 2011. On July 7, 2011, Bloomberg business reported that the Indiana Toll Road was in trouble:

"Eleven million trucks. That's how many 18-wheelers needed to rumble across northern Indiana in 2010 for the state's 157-mile toll road to break even. Unfortunately, only about half that many did and the road came up \$209 million short."²⁷

Cases 6,7,8: Three Civil Lawsuits Involving Ferrovial's Damages to Homeowners: Disrespect for American and Spanish homeowners and lack of quality and integrity

Case #6: Ferrovial was sentenced and made to pay 7 million euros to 200 homeowners in Madrid for poorly constructed homes.

On January 26, 2014, the First District Court Number 73 of Madrid ordered Ferrovial to pay 7 million euros to 200 homeowners for homes that the judge felt left little to be desired. The homes were built deficiently with problems of noise and odor. The experts said it was like a commune

²⁷ Wolf Carol. "The Public-Private Indiana Toll Road is in Trouble." *Bloomberg Business*. July 7, 2011.

where everyone could hear each other. The judge also noted that the sentence also included moral damages (this relates to mental anguish, suffering, etc.) imposed by Ferrovial²⁸.

Case #7: Ferrovial was sentenced to repair 37 of the 48 homes in a building in Mérida, Spain.

The First District Court Number 2 in Mérida Spain, ordered Ferrovial to repair 37 homes in a building located on la Calle Platón (Platon Street). There were abnormalities in the flooring, carpentry, and tiling. Also, the picture in the publication really spoke volumes about the poor quality of Ferrovial's work.²⁹

Case #8: Class Action Lawsuit was filed in Texas against Ferrovial Agromán for damage from I-635 LBJ Express's deep excavation and construction (Source: Pendley, Baudin, Coffin, LLP Attorneys at Law website, April 2, 2015)

Chris Cowan, from Dallas' The Cowan Law Firm, one of the attorneys who filed the lawsuit stated, "Trinity Infrastructure and Ferrovial Agroman were notified more than a year ago of the homeowners' serious foundation and structural damage caused by the removal of the soil providing lateral support to the neighborhood. Sadly, they failed to take measures to prevent such destruction during excavation, much less come back and do the right thing and repair these homes."

Contract Invalid: Cintra Infraestructuras has omitted these three cases in the disclosure documents. Question 4 from the FORM C Certification of the RFQ document states:

Question 4: Has the firm or any affiliate ever been found liable in a civil suit....?

In the disclosure documents labeled FORM C Responsible Proposer and Major Participant Questionnaire, Cintra Infraestructuras, completely omitted these important cases involving homeowners in Spain and the United States. In the class action lawsuit in Texas, Cintra was notified more than one year prior to the lawsuit being filed, but they did not disclose such an important investigation. There is a youtube video with people protesting with Ferrovial signs.

Oddly, these civil lawsuits should have been placed on the FORM C Certification, but the forms completely change for 2014 with the creation of completely different questions. This confusion and lack of consistency in the disclosure documents warrants investigation.

²⁸ Pozas, Alberto. "Condena millonaria a Ferrovial por construir una promoción de casas en mal estado." Cadenaser.com. January 26, 2014.

²⁹ Hidalgo, Carmen. "El juez condena a constructora a reparar deficiencias en 37 viviendas de Mérida." *El Periódico Extremadura*, March 19, 2014.

Finally, a note on the chairman and largest shareholder.

Rafael del Pino, chairman and largest shareholder of Ferrovial, S.A. and his siblings were forced to pay 200 million euros to the Treasury in Spain to avoid tax fraud.

This was first noted in the online publication *Vozpópuli* by Baltasar Montaña. Rafael del Pino and his family expatriated all dividends to Dutch company Portman Baela for years to avoid paying taxes in Spain.³⁰ This speaks volumes about the corrupt way in which Ferrovial is run. If Ferrovial Agroman, the construction division of Ferrovial S.A. is financially responsible for the Cintra contract (Aka I77 Mobility Partners), it is troublesome to know about the corrupt nature of its largest shareholder.

Louis Berger Group: Lead Design Firm for I-77 HOT lanes contract

In addition to these disturbing lawsuits and convictions against Ferrovial, the Louis Berger Group (LBG) based in New Jersey was selected as the Lead Design Firm on the I-77 HOT lanes project with Cintra Infraestructuras. **This firm is an international disgrace.** It has defrauded US taxpayers out of millions of dollars and it put our military in harm's way in Afghanistan. On November 5, 2010 Louis Berger agreed to pay one of the largest fines of any war-zone contractor (\$69.3 million in civil and criminal penalties). In an article dated November 21, 2010, *McClatchydc* describes how a Haitian whistleblower named Harold Salomon was manipulated:

In his first interview, Harold Salomon said he believed the New Jersey firm hired him because they believed he would be an easy prey. Mr. Salomon also thought that the Louis Berger executives calculated that as a Haitian immigrant he would not uncover their defrauding of U.S. Taxpayers.

The article also notes that "Salomon was asked to lie and misrepresent financial data to the Pentagon's Defense Contract Audit Agency. He also found a financial journal entry that was accompanied by a card that stated, "Do not show to auditors."

After winning the whistleblower's case, Mr. Salomon donated part of his settlement to the American Haitian Association for Medical, Economic, and Educational Support. He founded this nonprofit to help struggling Haitians.

On October 20, 2011 the FBI placed the following press release from the US Attorney's Office on its website:

³⁰ Montaña, Baltasar. "Del Pino paga 200 millones a Hacienda para eludir el delito fiscal por expatriar dividendos a Holanda." *Vozpópuli*. June 14, 2013.

“The former president and CEO of New Jersey-based international engineering consulting company Louis Berger Group Inc. (LBG) surrendered to the FBI this morning to face a six-count indictment alleging he led a scheme to intentionally overbill the United States in connection with hundreds of millions of dollars in overseas reconstruction contracts over a nearly 20-year period, U.S. Attorney for the District of New Jersey Paul J. Fishman announced.”

On December 12, 2014, the FBI included the updated press release from the US Attorney’s Office:

“The CEO of Louis Berger group pleaded guilty to conspiring to defraud the U.S. Agency for International Development (USAID) with respect to billions of dollars in contracts over a nearly 20-year period.” U.S. Attorney Fishman went on to say, “Derish Wolff admitted today that he enriched himself and his company with money intended for important reconstruction projects in Afghanistan and Iraq. This type of conduct cheats the American taxpayers.”

This dishonesty was not just the work of one man. The press release also notes:

“From at least 1990 to July 2009, LBG, through Wolff and other former executives, intentionally overbilled USAID. The scheme to defraud the government was carried out by numerous LBG employees at the direction of Wolff.”

It is also implausible to believe North Carolina state procurement laws would accept the Louis Berger Group since it was also debarred from the World Bank as well as the Asian Development Bank for corruption in Vietnam. In a press release dated February 4, 2015, the World Bank announced:

“The Louis Berger Group (LBG) has been debarred for one year for engaging in corrupt practices under two Bank-financed projects in Vietnam. The company made corrupt payments to government officials under the Third Rural Transport and Da Nang Priority Infrastructure Investment Projects.”

Additionally, on January 16, 2015 the United States Senate Committee on Foreign Relations wrote about the major fraud and bribery charges against the Louis Berger Group and International Relief and Development on their website. They discussed US Senator Bob Corker’s letter (also written on January 16, 2015) to the USAID and they printed it in full. Here are some of the highlights of his letter:

“In 2006, the Asian Development Bank debarred the company (Louis Berger Group) after discovering significant integrity deficiencies in consulting services LBG was hired to fulfill. These included forging signatures on documentation, falsifying documentation, and replacing proposed consultants with less qualified candidates without prior notification.”

The letter also cites a specific example of a highway constructed by LBG between Kabul and Kandahar in Afghanistan. Senator Corker discusses terrible problems with quality and LBG's failure to comply with the contract:

“Projects like these by LBG were so mismanaged and produced such dismal results that, at one point, the U.S. Ambassador to Afghanistan wrote a letter to USAID stating that “these problems are now beginning to interfere with the credibility of the U.S. Mission in Afghanistan, and require immediate corrective action.”

In conclusion, the cases mentioned above represent just the tip of the iceberg. This contract needs to be terminated immediately and a deep investigation into the NCDOT should take place right away. It is clear that either:

1: The NCDOT was grossly negligent and it failed to investigate Ferrovial/Cintra and also the Louis Berger Group. It did not do its homework for an important project that will impact the lives of NC citizens for the next 50 years.

Or

2. The NCDOT deliberately concealed criminal information and manipulated the outcome of the vote on this toll lane project. Politicians would not have voted for this project if they were aware of all of the criminal proceedings against Ferrovial/Cintra and the Louis Berger Group. If this is the case, a criminal investigation into the NCDOT should take place immediately. The entire organization would need to be restructured and top individuals should be removed from the NCDOT. Criminal hearings against NCDOT officials should take place. Also, the NCDOT stated that all bidders dropped out of the process and they only had one bid by March 31, 2014.

The second point obviously would be the most devastating. **In either case, the contract with Cintra Infraestructuras (I77 Mobility Partners) should be terminated.**

As I mentioned in the beginning of this letter, after a long and arduous process and numerous phone calls and emails (it took a month), I finally received Form C Certification (2012-2014) documents that were completed by Cintra and Louis Berger during the request for proposal process.

Here are the issues that mitigate an investigation into the NCDOT's procurement process:

1. I received FORM C CERTIFICATION documents for 2012 and 2013 labeled Request for Qualifications at the bottom of the page. The **2014 documents** were created using completely different forms. They were on FORM C Responsible Proposer and Major Participant Questionnaire with the words Request for Proposal at the end. The questions were different on these two sets of documents. **This is relevant because they try to avoid**

answering question 8 that was on the 2012 and 2013 forms. If they had completed the same form for 2014, they would have included the question: **“If not previously answered...is any proceeding, claim, matter, suit, indicting, etc. currently pending against the firm that could result in the firm being found liable, guilty.....”**This seems like they may have been created after receiving my letter to the Attorney General and the Inspector General of NC. Also, they were being pressed by the Carolina Journal to provide these documents.

2. Missing Information: In the 2012, Form C Certification, The Louis Berger Group checked the “yes” box in question 8 with regard to more “proceedings, claims, matters, suits indictments, etc. and they noted “see attachment”. **There was no attachment.**
3. Missing 2013 form for Louis Berger Group.
4. 2014 Form for Louis Berger Group: box was checked in c and d for fraud, bribery, collusion, civil complaints, etc. The disclosure statement provided by the Louis Berger Group at the end of the 2014 disclosure documents has no date.
5. In the 2013 FORM C Certification documents for Ferrovia Agroman dated November 26, 2013, the company oddly tries to define the word “imputado” under Spanish law in attempt to defend itself after reading my documents that were dated June 1, 2015 and July 12, 2015. It appears that some changes to the documents occurred after receiving my letters and the phone call from the Carolina Journal in July.

I would like very much to discuss this with you. I can be reached on my cell phone at 704-301-6497 or via email: dianegilroy@yahoo.com. The 1.5 million residents in our region are counting on your high integrity, honesty, and deep sense of social justice. Please work swiftly to terminate a contract that is invalid. By accepting this contract, you are condoning corruption, bribery of politicians to win public contracts, and many years of antitrust violations. Also, you will have accepted companies that have purposefully defrauded tax payers out of millions of dollars. We know that you will step in and clean up this terrible mess that has been bestowed upon the beautiful state of North Carolina. I am looking forward to your response.

Most sincerely,

Diane Elizabeth Gilroy, M.B.A, M.A.