

Public Disclosure Authorized

CONFORMED COPY

LOAN NUMBER 7637-ME

Loan Agreement

(Montenegro Energy Efficiency Project)

between

MONTENEGRO

and

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

Dated December 30, 2008

LOAN NUMBER 7637-ME

LOAN AGREEMENT

Agreement dated December 30, 2008, between MONTENEGRO (“Borrower”) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (“Bank”). The Borrower and the Bank hereby agree as follows:

ARTICLE I - GENERAL CONDITIONS; DEFINITIONS

- 1.01. The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.
- 1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or in the Appendix to this Agreement.

ARTICLE II - LOAN

- 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, the amount of six million five hundred thousand Euros (EUR 6,500,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.07 of this Agreement (“Loan”), to assist in financing the project described in Schedule 1 to this Agreement (“Project”).
- 2.02. The Borrower may withdraw the proceeds of the Loan in accordance with Section IV of Schedule 2 to this Agreement.
- 2.03. The Front-end Fee payable by the Borrower shall be equal to one quarter of one percent (0.25%) of the Loan amount.
- 2.04. The interest payable by the Borrower for each Interest Period shall be at a rate equal to LIBOR for the Loan Currency plus the Variable Spread; provided, that upon a Conversion of all or any portion of the principal amount of the Loan, the interest payable by the Borrower during the Conversion Period on such amount shall be determined in accordance with the relevant provisions of Article IV of the General Conditions. Notwithstanding the foregoing, if any amount of the Withdrawn Loan Balance remains unpaid when due and such non-payment continues for a period of thirty days, then the interest payable by the Borrower shall instead be calculated as provided in Section 3.02 (d) of the General Conditions.
- 2.05. The Payment Dates are April 1 and October 1 in each year.

- 2.06. The principal amount of the Loan shall be repaid in accordance with the amortization schedule set forth in Schedule 3 to this Agreement.
- 2.07. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management: (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, withdrawn or unwithdrawn, to an Approved Currency; (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Variable Rate to a Fixed Rate, or vice versa; and (iii) the setting of limits on the Variable Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on the Variable Rate.
- (b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by the Bank shall be considered a “Conversion”, as defined in the General Conditions, and shall be effected in accordance with the provisions of Article IV of the General Conditions and of the Conversion Guidelines.
- (c) Promptly following the Execution Date for an Interest Rate Cap or Interest Rate Collar for which the Borrower has requested that the premium be paid out of the proceeds of the Loan, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and pay to itself the amounts required to pay any premium payable in accordance with Section 4.05 (c) of the General Conditions up to the amount allocated from time to time for the purpose in the table in Section IV of Schedule 2 to this Agreement.

ARTICLE III - PROJECT

- 3.01. The Borrower declares its commitment to the objectives of the Project. To this end, the Borrower shall carry out the Project through MED, MoES and MoHLSW in accordance with the provisions of Article V of the General Conditions.
- 3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Borrower and the Bank shall otherwise agree, the Borrower shall ensure that the Project is carried out in accordance with the provisions of Schedules 2 and 4 to this Agreement.

ARTICLE IV - TERMINATION

- 4.01. The Effectiveness Deadline is the date ninety (90) days after the date of this Agreement.

ARTICLE V - REPRESENTATIVE; ADDRESSES

- 5.01. The Borrower's Representative is the Minister of Finance.

- 5.02. The Borrower's Address is:

Ministry of Finance
Stanka Dragojevicica 2
20000 Podgorica
Montenegro

Facsimile:

382 20 224 450

- 5.03. The Bank's Address is:

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

Telex:

Facsimile:

INTBAFRAD
Washington, D.C.

248423(MCI) or
64145(MCI)

1-202-477-6391

AGREED at Podgorica, Montenegro, as of the day and year first above written.

MONTENEGRO

By /s/ Igor Luksic

Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Jan-Peter Olters

Authorized Representative

SCHEDULE 1

Project Description

The objective of the Project is to improve energy efficiency performance in targeted public sector buildings with a view to developing a sustainable energy efficiency improvement program in the Borrower's public sector.

The Project consists of the following parts:

Part A. Energy Efficiency Improvement in Public Sector Buildings

Implementing a program of demonstrable energy savings measures, through the carrying out of civil works and the provision of goods and consultants' services, to support energy efficiency retrofitting in selected public sector buildings such as schools and other buildings for educational purposes, hospitals, clinics and facilities for social care.

Part B. Support to the Implementation of the Project

(a) Support to the Project Steering Committee, the Project coordinator and the TSU in the implementation, monitoring and evaluation of the Project, through the provision of goods, consultants' services and training, the carrying out of audits required under the Project and the financing of Operating Costs; (b) the carrying out of surveys and energy audits; and (c) support to MoES and MoHLSW, through the provision of consultants' services, for the design, procurement and implementation of energy savings measures under the Project.

SCHEDULE 2

Project Execution

Section I. Implementation Arrangements

A. Institutional Arrangements

1. The Borrower shall, throughout the duration of the Project, maintain the Project Steering Committee with a composition and terms of reference acceptable to the Bank. The Project Steering Committee, which shall be headed by MED, shall be responsible for overall Project implementation oversight and coordination and for preparing Project Reports.
2. For purposes of Part A of the Project, MoES and MoHLSW shall each maintain an investment and Project implementation staff, supported as necessary by consultants, with qualifications and terms of reference acceptable to the Bank, responsible for preparing, designing and implementing energy efficiency measures in, respectively, schools and other buildings for educational purposes, hospital, clinics and facilities for social care, and for coordinating with the Project Steering Committee.
3. The Borrower shall, within two (2) months from the Effectiveness Date, appoint and thereafter maintain, throughout the duration of the Project, a Project coordinator with qualifications and terms of reference acceptable to the Bank. The Project coordinator, which shall be assigned to MED's energy efficiency unit, shall be responsible for supporting the Project Steering Committee, MoES and MoHLSW in the implementation, coordination, monitoring and evaluation of the Project, and for coordinating with the Project Steering Committee and the TSU.
4. TSU shall be responsible for procurement, disbursement and financial management of the Project under arrangements satisfactory to the Bank, in accordance with the provisions of this Agreement and the Procurement Plan and, to this end, the Borrower shall maintain, adequately fund and staff the TSU with qualifications and terms of reference acceptable to the Bank.

B. Anti-Corruption

The Borrower shall ensure that the Project is carried out in accordance with the provisions of the Anti-Corruption Guidelines.

C. Safeguards

1. The Borrower shall carry out the Project in accordance with the Environmental Management Framework, and shall not amend, suspend, abrogate, repeal or waive any provision of said Framework without prior written approval of the Bank.
2. The Borrower shall ensure that no works under Part A of the Project involve land acquisition or resettlement of population.
3. For purposes of Part A of the Project and prior to the commencement of any energy savings measures for each proposed site, the Borrower shall: (a) submit to the Bank for its approval the proposed site for said measures and the related site-specific environmental management plan and checklist, said site-specific plan and checklist to be in form and substance satisfactory to the Bank and to be duly included in the proposed contracts for said measures; and (b) ensure that such measures are carried out in accordance with the Environmental Management Framework.

Section II. Project Monitoring Reporting and Evaluation

A. Project Reports

1. The Borrower shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 5.08 of the General Conditions and on the basis of indicators agreed with the Bank. Each Project Report shall cover the period of one (1) calendar semester, and shall be furnished to the Bank not later than one (1) month after the end of the period covered by such report.
2. For purposes of Section 5.08 (c) of the General Conditions, the report on the execution of the Project and related plan required pursuant to that Section shall be furnished to the Bank not later than six (6) months after the Closing Date.

B. Financial Management, Financial Reports and Audits

1. The Borrower shall maintain or cause to be maintained a financial management system in accordance with the provisions of Section 5.09 of the General Conditions.
2. Without limitation on the provisions of Part A of this Section, the Borrower shall prepare and furnish to the Bank not later than forty five (45) days after the end of each calendar quarter, interim unaudited financial reports for the Project covering the quarter, in form and substance satisfactory to the Bank.

3. The Borrower shall have its Financial Statements audited in accordance with the provisions of Section 5.09 (b) of the General Conditions. Each audit of the Financial Statements shall cover the period of one (1) fiscal year of the Borrower. The audited Financial Statements for each such period shall be furnished to the Bank not later than six (6) months after the end of such period.

Section III. Procurement

A. General

1. **Goods and Works.** All goods and works required for the Project and to be financed out of the proceeds of the Loan shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines, and with the provisions of this Section.
2. **Consultants' Services.** All consultants' services required for the Project and to be financed out of the proceeds of the Loan shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines and with the provisions of this Section.
3. **Definitions.** The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Bank of particular contracts refer to the corresponding method described in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

B. Particular Methods of Procurement of Goods and Works

1. **International Competitive Bidding.** Except as otherwise provided in paragraph 2 below, goods and works shall be procured under contracts awarded on the basis of International Competitive Bidding.
2. **Other Methods of Procurement of Goods and Works.** The following table specifies the methods of procurement, other than International Competitive Bidding, which may be used for goods and works. The Procurement Plan shall specify the circumstances under which such methods may be used.

Procurement Method	
(a)	National Competitive Bidding: Procedures for National Competitive Bidding shall be carried out by using either (a) World Bank standard bidding documents or (b) bidding documents, acceptable to the Bank, prepared by the Borrower on the basis of Open tendering procedure under the Borrower's Public Procurement Law (Official Gazette 46/06 of July 21, 2006), all subject to the additional procedures set forth in Schedule 4 to this Agreement.

Procurement Method	
(b)	Shopping
(c)	Direct Contracting

C. Particular Methods of Procurement of Consultants' Services

1. **Quality- and Cost-based Selection.** Except as otherwise provided in paragraph 2 below, consultants' services shall be procured under contracts awarded on the basis of Quality and Cost-based Selection.
2. **Other Methods of Procurement of Consultants' Services.** The following table specifies the methods of procurement, other than Quality and Cost-based Selection, which may be used for consultants' services. The Procurement Plan shall specify the circumstances under which such methods may be used.

Procurement Method	
(a)	Least Cost Selection
(b)	Selection Under a Fixed Budget
(c)	Selection Based on Consultants' Qualifications
(d)	Individual Consultants
(e)	Single Source Selection
(f)	Sole Source Selection

D. Review by the Bank of Procurement Decisions

The Procurement Plan shall set forth those contracts which shall be subject to the Bank's Prior Review. All other contracts shall be subject to Post Review by the Bank.

Except as the Bank shall otherwise determine by notice to the Borrower, the following contracts shall be subject to Prior Review by the Bank:

- (a) for goods and works: each contract procured on the basis of International Competitive Bidding; the first two contracts procured on the basis of National Competitive Bidding; each contract for goods (supply and installation), the first two contract for works and the first two contracts for goods procured on the basis of

Shopping; and each contract procured on the basis of Direct Contracting; and (b) for consultants' services: each contract for services provided by a firm estimated to cost the equivalent of \$100,000 or more; the first two contracts for services provided by a firm estimated to cost less than \$100,000; the first two contracts with individual consultants; each contract with individual consultants estimated to cost the equivalent of \$50,000 or more; each Single Source Selection contract; and each Sole Source Selection contract. All other contracts shall be subject to Post Review by the Bank.

Section IV. Withdrawal of Loan Proceeds

A. General

1. The Borrower may withdraw the proceeds of the Loan in accordance with the provisions of Article II of the General Conditions, this Section, and such additional instructions as the Bank shall specify by notice to the Borrower (including the "World Bank Disbursement Guidelines for Projects" dated May 2006, as revised from time to time by the Bank and as made applicable to this Agreement pursuant to such instructions), to finance Eligible Expenditures as set forth in the table in paragraph 2 below.
2. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of the Loan ("Category"), the allocation of the amounts of the Loan to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category.

Category	Amount of the Loan Allocated (expressed in Euros)	Percentage of Expenditures to be financed
(1) Goods, works and consultants' services for the Project	6, 233,750	100%
(2) Operating Costs	250,000	100%
(3) Front-end Fee	16,250	Amount payable pursuant to Section 2.03 of this Agreement in accordance with Section 2.07 (b) of the General Conditions

Category	Amount of the Loan Allocated (expressed in Euros)	Percentage of Expenditures to be financed
(4) Premia for Interest Rate Caps and Interest Rate Collars	0	Amount payable pursuant to Section 2.07(c) of this Agreement in accordance with Section 4.05(c) of the General Conditions
TOTAL AMOUNT	<u>6,500,000</u>	

B. Withdrawal Conditions; Withdrawal Period

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made for payments made prior to the date of this Agreement.
2. The Closing Date is December 31, 2012.

SCHEDULE 3

Amortization Schedule

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (“Installment Share”). If the proceeds of the Loan have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by the Bank by multiplying: (a) Withdrawn Loan Balance as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayable amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

Principal Payment Date	Installment Share (Expressed as a Percentage)
October 1, 2012	14.25%
April 1, 2013	13.75%
October 1, 2013	13.25%
April 1, 2014	12.75%
October 1, 2014	12.25%
April 1, 2015	11.75%
October 1, 2015	11.25%
April 1, 2016	10.75%

2. If the proceeds of the Loan have not been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:
- (a) To the extent that any proceeds of the Loan have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the Withdrawn Loan Balance as of such date in accordance with paragraph 1 of this Schedule.
 - (b) Any amount withdrawn after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by the Bank by multiplying the amount of each such withdrawal by a fraction, the numerator of which is the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (“Original Installment Share”) and the denominator of which is the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such

date[, such amounts repayable to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. (a) Amounts of the Loan withdrawn within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.
 - (b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, if at any time the Bank adopts a due date billing system under which invoices are issued on or after the respective Principal Payment Date, the provisions of such sub-paragraph shall no longer apply to any withdrawals made after the adoption of such billing system.
4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the Withdrawn Loan Balance to an Approved Currency, the amount so converted in the Approved Currency that is repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by the Bank by multiplying such amount in its currency of denomination immediately prior to the Conversion by either: (i) the exchange rate that reflects the amounts of principal in the Approved Currency payable by the Bank under the Currency Hedge Transaction relating to the Conversion; or (ii) if the Bank so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

SCHEDULE 4

Additional Procedures for National Competitive Bidding

For purposes of paragraph B.2 (a), Section III of Schedule 2 to this Agreement, the following additional procedures shall apply to National Competitive Bidding:

(a) Generalities

Bidding shall be conducted using "Open Procedures." Furthermore, restricted procedure shall not be used without the express consent of the Bank and is subject to the following conditions:

- the contracting authority shall invite all the candidates that meet the selection criteria
- no maximum number of selected candidates shall apply.

(b) Registration

- Bidding shall not be restricted to pre-registered firms;
- Where registration is required, bidders (1) shall be allowed a reasonable time to complete the registration process, and (2) shall not be denied registration for reasons unrelated to their capability and resources to successfully perform the contract, which shall be verified through post-qualification; and
- Foreign bidders not from the territory of Republic of Montenegro shall not be precluded from bidding. If a registration process is required, a foreign bidder declared the lowest evaluated bidder shall be given a reasonable opportunity to register.

(c) Advertising, time for submission of bids

- Invitations to bid shall be advertised in at least one widely circulated national daily newspaper. Invitations could be also advertised on the web site of the respective ministry.
- Time allowed for the preparation and submission of bids shall not be less than thirty (30) days from the time of the invitation to bid or the date of availability of bidding documents, whichever is later.

(d) Pre-qualification

- When pre-qualification shall be required for large or complex works, invitations to pre-qualify for bidding shall be advertised in at least one (1) widely circulated national daily newspaper. Invitations could be also

advertised in the official gazette and on the web site of the Public Procurement Bureau.

- Time allowed for the preparation and submission of bids shall not be less than thirty (30) days from the time of the invitation to bid or the date of availability of bidding documents, whichever is later.
- Minimum experience, and technical and financial requirements, shall be explicitly stated in the pre-qualification documents.

(e) Participation by Publicly-owned enterprises

- Publicly-owned enterprises shall be eligible to participate in bidding only if they can establish that they are legally and financially autonomous, operate under commercial law and are not a dependent agency of the contracting authority. Furthermore, they will be subject to the same bid and performance security requirements as other bidders.

(f) Bidding Documents

Procuring entities shall use the appropriate standard bidding documents acceptable to the Bank for procurement of goods and works.

(g) Bid Opening, Bid Evaluation and Contract Award

- Bids shall be submitted in a single envelope containing the bidder's qualification information, technical and price bids, which shall be opened simultaneously at the public bid opening;
- No bids shall be rejected at the bid opening except for late bids and bids shall not be evaluated as part of bid opening process.
- The economic, financial and technical capacity of the bidders cannot be guaranteed by another entity, except joint venture and observing those criteria set up in the bidding documents.
- Evaluation of bids shall be made in strict adherence to the quantifiable criteria declared in the bidding documents and evaluation criteria other than price shall be quantified in monetary terms.
- Bids not substantially responsive shall be rejected.
- Extensions of bid validity will be allowed once only for not more than 30 days. No further extensions shall be requested without the prior approval of the Bank;
- Contracts shall be awarded to the qualified bidder having submitted the lowest-evaluated and substantially responsive bid. No negotiation shall take place.

(h) Rejection of all bids

All bids shall not be rejected and a new procurement process starts without the Bank's prior concurrence.

(i) Price Adjustment

Civil works contracts of long duration (more than 18 months) shall contain an appropriate price adjustment clause.

(j) Securities

- Bid security and performance security should follow the generally accepted practice used in the local market.
- Alternative methods such as bid securing declaration may be acceptable, in which case the Borrower may require bidders to sign a declaration accepting that if they withdraw or modify their bids during the period of validity or they are awarded the contract and they fail to sign the contract or to submit a performance security before the deadline defined in the bidding documents, the bidder will be suspended for bidding in any contract with the implementing unit.
- No advance payment shall be made to contractors without a suitable advance payment security. These securities shall be included in the bidding documents in a text and format acceptable to the Bank.

(k) Right to inspect and audit

Each contract financed from the proceeds of the Loan shall provide that the suppliers, contractors and subcontractors shall permit the Bank, at its request, to inspect their accounts and records relating to the procurement and performance of the contract and to have said accounts and records audited by auditors appointed by the Bank. The deliberate and material violation by the supplier, contractor or subcontractor of such provision may amount to obstructive practice.

(l) Fraud & Corruption

The Bank shall declare a firm or individual ineligible, either indefinitely or for a stated period, to be awarded a contract financed by the Bank, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a contract financed by the World Bank Group.

APPENDIX

Definitions

1. “Anti-Corruption Guidelines” means the “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006.
2. “Category” means a category set forth in the table in Section IV of Schedule 2 to this Agreement.
3. “Consultant Guidelines” means the “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” published by the Bank in May 2004 and revised in October 2006.
4. “Environmental Management Framework” means the framework dated July 25, 2008, prepared and adopted by the Borrower and satisfactory to the Bank, consisting of the set of mitigation, monitoring, and institutional measures required for the Project and to be taken to eliminate adverse environmental and social impacts, offset them, or reduce them to acceptable levels, as well as actions needed to implement said measures, including the measures and information required for the preparation of site-specific environmental management plans and checklists referred to in paragraph C.3, Section I of Schedule 2 to this Agreement.
5. “General Conditions” means the “International Bank for Reconstruction and Development General Conditions for Loans”, dated July 1, 2005 (as amended through February 12, 2008).
6. “MED” means the Borrower’s Ministry for Economic Development and includes any successor thereto.
7. “MoES” means the Borrower’s Ministry of Education and Science and includes any successor thereto.
8. “MoHLSW” means the Borrower’s Ministry of Health, Labor and Social Welfare and includes any successor thereto.
9. “Ministry of Finance” or “MoF” means the Borrower’s Ministry of Finance and includes any successor thereto.
10. “Operating Costs” means the incremental expenses incurred by the Project Steering Committee, the Project coordinator and the TSU on account of Project implementation, including the costs of translation, communication, printing and

supplies, local travel costs and field trip expenses and fees paid to the consultant hired for purposes of Project coordination, other than civil servants' salaries.

11. "Procurement Guidelines" means the "Guidelines: Procurement under IBRD Loans and IDA Credits" published by the Bank in May 2004 and revised in October 2006.
12. "Procurement Plan" means the Borrower's procurement plan for the Project, dated September 23, 2008, and referred to in paragraph 1.16 of the Procurement Guidelines and paragraph 1.24 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.
13. "Project Steering Committee" means the Project steering committee established pursuant to the Borrower's decision dated September 22, 2008, and maintained by the Borrower in accordance with paragraph A.1, Section I of Schedule 2 to this Agreement, and comprising representatives of MED, MoES and MoHLSW and the Project coordinator.
14. "TSU" means the Technical Services Unit within MoF.