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FIDIC-SIDiR-EFCA Regional Infrastructure Conference

**Krakow
7 & 8 March 2016**

Andrea Sehic, ACES Executive Director



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“Serbian experience in implementation of FIDIC conditions of contract in country’s legal system”

Association of Consulting Engineers of Serbia – ACES



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ACES Serbia

- Association of Consulting Engineers of Serbia has been founded in April **2009**
- ACES: Member of **FIDIC** since September 2009
- ACES: Member of **EFCA** since May 2010
- Founders of the Association are recognized companies in Serbia engaged in providing consulting engineering services



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ACES Goals in Serbia

- **Promote the role and importance of FIDIC standards**
- Affirm the highest **ethical standards** that could be applied in the work of consulting engineers to ensure effective participation in **fight** against **corruption** in the construction industry
- Promote procedures that **ensure transparency**
- Encourage **development** and **innovation** of technical **knowledge**
- **Advocate** for the **reform** of the **legal** framework
- Monitor and provide necessary information for its members related to **laws, regulations, policies** and programs of relevant institutions in Serbia that are of interest to the Association
- Create better business environment!



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ACES Plans in Serbia

- Continue building the knowledge base and capacity for implementation of FIDIC models of contract by organizing trainings, seminars, workshops and consultations
- Continue providing licensed FIDIC models of contract to the national/regional market
- Advocacy and Policy initiatives to increase impact on the legislative process
- Improve competitiveness according to standards, based on quality



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ACES Focus in Serbia

- **Promoting FIDIC values**
- **Advocacy: Improving the Business Climate in Serbia**
 - 1. Reform: Law on Planning and Construction**
 - Initiative from 2009
 - Initiative from 2013 (completed + ongoing monitoring)
 - 2. Reform: Law on Public Procurement**
 - Initiative from 2015 (ongoing)



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Law on Planning and Construction



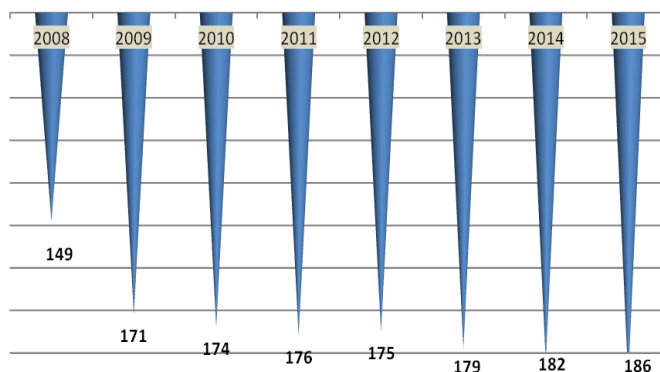
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Before the reform

Serbia's position in terms of construction permitting efficiency in the World Bank's *Doing Business* rankings, issue 2008-2015.*



* A total of 189 economies were ranked in 2015



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Before the reform: Problems

- Unclear title: issues with Cadastre, conversion, 'legalisation' (ex-post permitting)
- Quality and coverage of planning documents: zoning plans often absent
- Even where zoning plans are in place, they are not detailed enough to support issuance of conditions for construction
- No monitoring or evaluation of public sector efficiency: Everyone is equally accountable, meaning no-one is truly accountable
- Land development charge is by far the greatest para-fiscal imposition, reaching as much as EUR 350 to 400 per square metre of building as constructed



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Before the reform: Problems

- Collision of the Law with other sectoral complementary investment-related laws
- Unclearly defined procedures and deadlines, resulting in Employer's severe loss of time (commencement date and time for completion)
- Extensive documentation needed for authorities' approval and issuance of permits
- Insufficient knowledge of authorities' staff to evaluate submitted documentation
- Due to all of the above, authorities are overloaded and processing time is extended
- Difficulties in implementation of certain types of international models of contract (FIDIC) due to the definition of the scope of work and the volume of documents needed for permits



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**How did one permit turn into 20:
An illustrative list of conditions, consents, and approvals**

- | | |
|--|------------------------------------|
| 1. National Power Generation Co. | 9. Local heating plants |
| 2. Construction Directorate | 10. Cultural Heritage Institute |
| 3. National Power Grid | 11. Civil Aviation Directorate |
| 4. Serbian Railways | 12. Met Office |
| 5. Serbia Gas | 13. Seismology Institute |
| 6. Environmental Protection Institute | 14. Ministry of Defence |
| 7. Ministry of Interior, Emergency Management Department | 15. Serbia Roads |
| 8. Serbia Water Management Co. / Vojvodina Water Mgmt. Co. | 16. Local water and sewage |
| | 17. National Forest Management Co. |

... and more ...

For some of these organisations the investors had to 'queue up' three times: first to obtain design conditions, followed by approval of the main design, and, finally, to file for connection to utility grids.

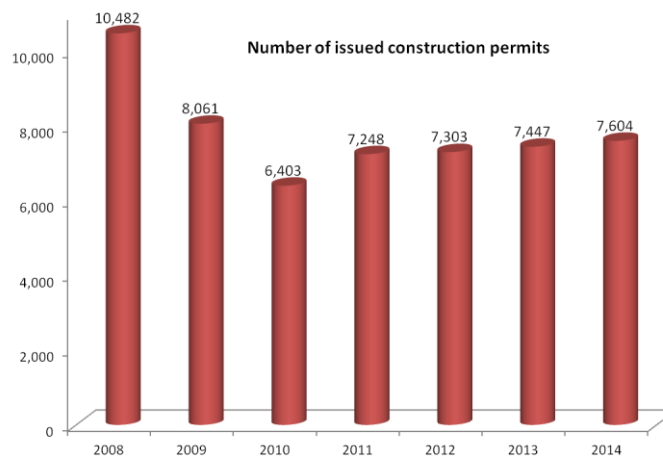


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Where has this led us to: number of permits issued still far below 2008 levels



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What about FIDIC models of contract?

- For the past +/- 10 years, Serbia has been engaging into financial arrangements with IFIs (World Bank, EIB, EBRD, KfW, etc), donor programs and PPPs which required FIDIC models of contract for infrastructure and other public works.
- Condition to use FIDIC contracts is coming from the fact that such contracts enable transparency and define risk and responsibility distribution among the Parties.



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What about FIDIC models of contract?

- The Law on Planning and Construction from 2009 was **enabling** the use of **FIDIC Red Book**
- Practice showed the biggest challenges and **difficulties** in implementation of:
 - **FIDIC Plant and Design-Build (Yellow Book)**
 - **FIDIC EPC (Silver Book).**



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What about FIDIC models of contract?

- Both models of contract (FIDIC Plant and Design-Build and FIDIC EPC) are about contracting construction works on lump sum basis without unit prices and amounts of materials,i.e. without BoQ.
- This is one of the most important differences because payments are made on the basis of degree of executed works, not on works measurement.
- According to the previous Law on Planning and Construction BoQ is obligatory part of Preliminary and Detail Design.



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What about FIDIC models of contract?

- Due to this mandatory request countless problems arose when calculating and certifying Interim payments.
- According to Serbian legislation Interim payments have to be calculated and certified in accordance with measurement book verified by the Supervisor.
- In addition to this, there are significant differences in risk distribution on the project (than the one defined by the Law), and in cases when changes in technical documentation during construction are needed.



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Law on Planning and Construction

Reform Goals:

- Create better business environment
- Apply international best-practice
- Affirm the highest professional and ethical standards
- Enable implementation of FIDIC models of contract within the Law on Planning and Construction framework
- Enhance efficiency in completion of construction projects



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Partnering for reform

- Inspirations and experiences: From Singapore, via Macedonia, to Slovenia. And everywhere in between.
- A total of 1,965 people consulted at 70 events as part of amendments to Law on Planning and Construction
- Co-operation with societies, professional associations, and local authorities: USAID, NALED; SCTM; cities, towns, and municipalities; Chamber of Engineers; Chamber of Commerce; AmCham; Foreign Investors Council, etc.
- Donor support: USAID; GIZ; SDC; EU; World Bank.



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New Law: Improvements

- **Single, Centralized Procedure** – “one-stop shop” where authorities obtain all public documents and records, instead of the Employer doing so
- **Strict deadlines for every segment of the procedure**, with clearly defined accountability, and penalties for delays caused by authorities
- **E-government / E-permitting**, starting on January 1, 2016. godine, for all document exchanges between applicants and authorities, and among all governmental entities
- Introducing **predictability** (all construction conditions and costs are defined early in the phase of concept design) **and transparency** (mandatory availability of data online).



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New Law: Improvements

- **Redefinition of jurisdiction among parties**, (public and private parties), based on the fact that control is being performed by the ones with more competence to do so.
 1. Public interest protection, securing the accuracy of the technical documentation and construction process is the responsibility of private sector entities - Engineers
 2. Authorities can ensure that public interest is protected by controlling the formal conditions / alignment with conditions for a particular location from the project excerpt and by inspection/supervision during construction



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Focus on implementation

- Bringing 'dead' sites back to life:
 - Making sure urban plans guide construction, not hinder it
 - Conversion Law in place; laws to recognise unpermitted buildings and govern state survey and cadastre to follow soon
 - Limiting land development contributions
 - Ex officio* registration of title
- Nearly 30 bylaws enacted in 3 months
- Two sectoral laws aligned with amendments to Law on Planning and Construction
- Three binding Inter-Ministerial Instructions issued
- A total of 2,196 public and private-sector participants attended reform implementation seminars
- E-permitting started on 1 January 2016
- Call Centre to support implementation operational
- www.gradjevinskedomozvole.rs devoted exclusively to support implementation of Law on Planning and Construction – about 770 questions and answers posted to date
- Detailed Construction Permitting Guide: From Idea to Occupancy

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POLITIKA PRIVATNOSTI

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Initial effects in 2015

- Quicker and cheaper permitting
- More investment
- Less illicit construction
- **22 percent increase in number of permits issued** in six months of one-stop-shops relative to average figures for the same period over the past seven years

	2010	2011	2012	2013	2014	2015
January	406	355	358	370	389	329
February	322	429	359	436	486	314
March	517	543	585	564	566	576
April	531	569	742	684	589	754
May	492	570	645	594	644	864
June	572	650	682	550	619	852
July	557	612	695	733	734	1,028
August	619	735	664	700	718	
September	660	712	683	751	786	
October	628	786	784	807	771	
November	629	654	604	630	638	
December	470	633	502	628	664	
I - VII	3,397	3,728	4,066	3,931	4,027	4,717
III - VII	2,669	2,944	3,349	3,125	3,152	4,074
IV - VII	2,152	2,401	2,764	2,561	2,586	3,498

Source: RSO data. Calculations: USAID BEP

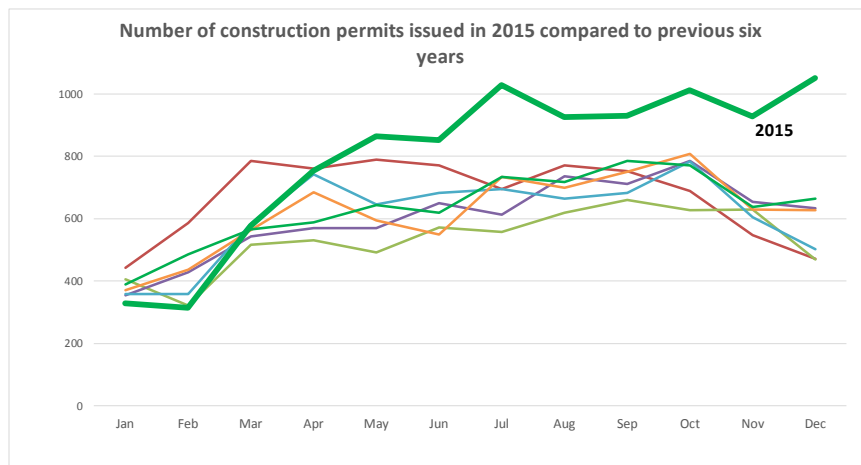
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Initial effects in 2015



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Effects in 2015/2016

- Official statistics show **steady rise of the number of issued construction permits**, that translates into strong growth of the construction industry: number of construction permits in November 2015 is 45% higher than in November 2014; in the period of March 1 (launch of the One Stop Shops) to November 30, 2015, there are 30% increase in construction permits issues compared to the same period in 2014, and 35% more compared to the March through November average for the previous five years (2010-2014).
- Estimated **value of construction works** (for newly issued permits) in the period January–November 2015 is **84% more** than in the same period of last year.
- **Gross Domestic Product (GDP) wise, construction sector rose in real terms** (inflation adjusted) **by 18.3%** in Q3 2015 compared to Q3 2014; for comparison purposes, first next sector – industry – rose by 8.3%, while overall GDP growth in Q3 2015/Q3 2014 was only 2,2%.
- Value of construction works in Q3 2015/Q3 2014 rose by 27%. For Q1-3 2015/Q1-3 2014, increase is smaller – 20%, as it includes below average first quarter of 2015, which was shortly after changes to the Law on Planning and Construction (Dec. 2014) and launch of OSSs (March 2015). As a result, **construction sector's share in GDP rose from 4.5% to 5.1%** in Q3 2015.
- Good performances of the construction sector already led to an **increase in number of workers** and number of working hours on construction sites which in Q1-3 2015 rose by 2.4 and 3.3% respectively compared to Q1-3 2014. in 2014 to 5.1% in Q2 2015.
- Serbia on **Doing Business List 2016** – # 139 (**improved 39 places** compared to 2015 final results)



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How does FIDIC fit in now?



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Law on Public Procurement

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Legal Framework

- By signing the Stabilisation and Association Agreement (SAA) with the European Union in 2008, the Republic of Serbia has made a commitment to regulate public procurement and align it with EU directives, via:
 - Reform of the Law on PC in 2015 (completed)
 - Enacting a new Law on PC in 2017 (to ensure full compliance with EU legislation)
- Currently, there are 10 different bylaws in place

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Institutional Framework

- Institutions directly responsible for PP:
 - Public Procurement Office
 - Republic Commission for Protection of Rights in Public Procurement Procedures
 - State Audit Institution
- Other public sector entities involved:
 - Ministry of Finance
 - Anti-Corruption Agency
 - Commission for Protection of Competition



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Open Procedure

- Open procedure is used for procurement of higher value
 - Construction / Reconstruction of buildings and infrastructure
- Conditions to be fulfilled for the Open procedure:
 - Planned and secured funds for the investment
 - Procedure is noted in the Public Procurement Plan
 - Acquired all technical documentation required by the Law on Planning and Construction



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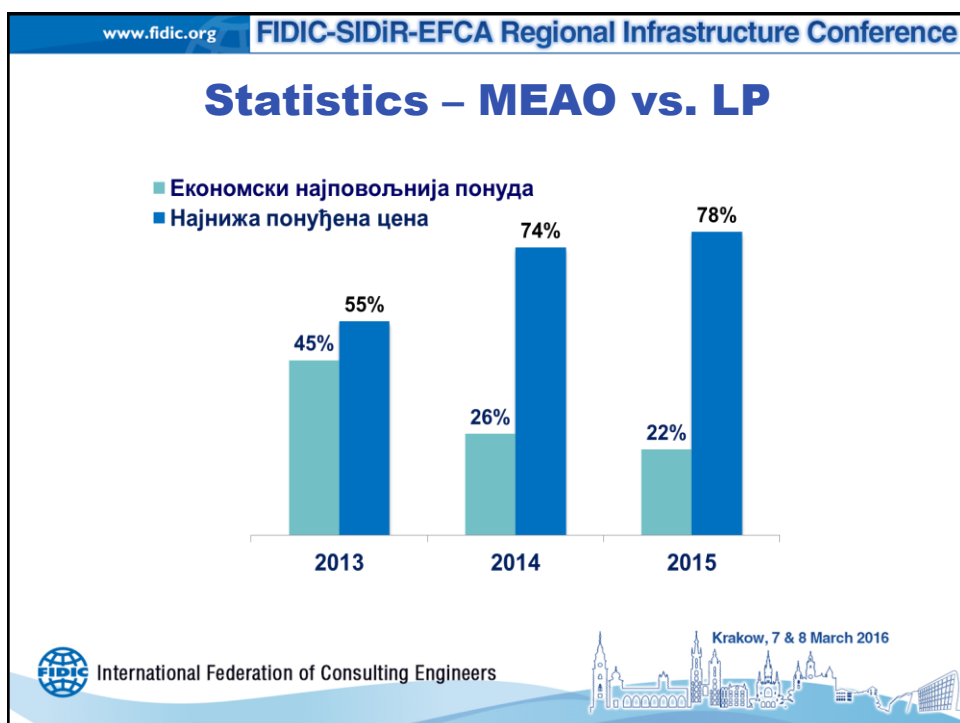
Selection Criteria

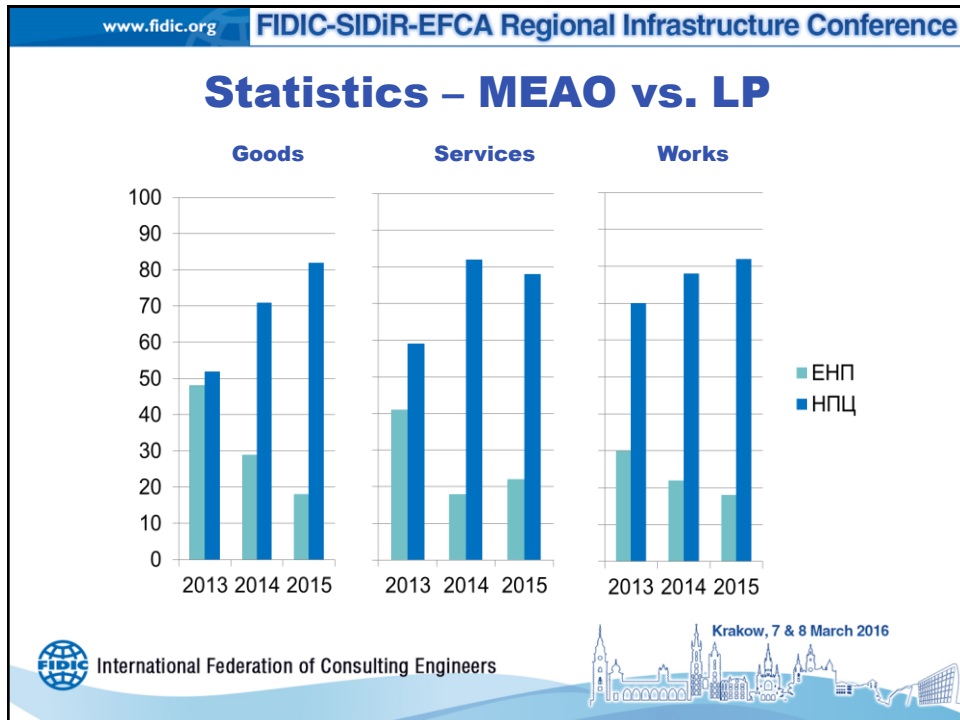
Lowest Price

Most Economically Advantageous Offer

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Current State of the Market

We are witnessing the fact that **the current practice on public procurement**, based on the award of the contract on the provision of consultancy services, based on the lowest price offered, **leads to:**

- Increase of the total cost of the construction, operation and maintenance of facilities;
- Longer times needed for completion and start of use;
- Reducing or even suspension of the necessary research, development and innovation, that impose development of modern technology;
- Use of outdated standards, norms, technologies and materials in construction industry;
- Demotivation among the most highly skilled young professionals and a gradual decline in professional excellence;
- Loss of competitiveness in the international market and investors interest in domestic construction services;
- Incompatibility of contracts awarded on minimum price with the much-needed instruction of "innovative public procurement" as a precondition for strengthening the Industrial Sector.

The consequences of such attitude towards public resources lead towards using insufficiently analyzed technical and financial solutions. Also, it is observed that deadlines required for the preparations of projects are unusually short, which effectively means that there is not enough time for possible optimization, modifications and analysis of rational technical or financial solutions.

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Suggested Reform


Serbian "Statement in Support of Quality in Engineering and Architectural Services"

Prepared based on:

- Directives 2014/24/EU, 2004/18/EC, 2006/123/EC
- EFCA Policy Paper recommendations
- Corresponding Spanish Statement
- Government need to ensure full compliance with EU legislation (2017)

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Statement Recommends Quality

- To recognize Engineering and Architectural services as intellectual services, recognizing the authorship of engineers and architects, through adoption and implementation of new European Public Procurement Directives in the Law on Public Procurement;
- When planning the budget necessary for the realization of projects, to account for all costs (i.e. Life Cycle Cost): preparation of planning documents, consulting services (project management, design, supervision), construction, operation management and maintenance of facilities;
- To legally define and carry out required preparation of Sustainable planning and design, to increase the focus on evaluation and calculation in terms of costs for Maintenance and Operation Design/Manual, as well as Social and Environmental Impact Assessment;
- To select bids for engineering and architectural services based on experience and suitability; To award contracts for the engineering, architectural and consulting services following the evaluation of bids based on a combined criteria of quality and price (QCBS – quality and cost based selection), and that 70% weighting should account for the offered quality and 30% weighting should be based on the price offered;
- To reject abnormally low bids that deviate from the average or the expected tender prices for more than 30%, as well as those which provide greater discounts than the average discount (e.g. more than 10%). This policy has been successfully applied for many years in the past and is currently applied at the European Commission, World Bank and other multilateral institutions;

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Statement Recommends Quality

- Works ordered the public administration (in charge of public procurement) which directly depend on preparation of project and other technical documentation should be delegated to professional teams, if not in its entirety, at least in the form of control;
- Systematically incorporate and value improvements resulting from research and development, as well as application of "innovative procurement" criteria;
- Within the invitation to tender for services - To require or prescribe participation of young Architects and Engineers (Young professionals) in the project and thus stimulate them to remain in Serbia;
- For the purpose of timely and adequate budgeting of consultancy services, provide a value range of consulting services from 5% to 14% of the value for the works according to the following distribution:

• Project Management	1.0 – 3.0%
• Master Plan Design	0.5 – 2.0%
• Urban Project Design	0.3 – 1.0%
• Development of Architectural and other Engineering Projects	2.0 – 5.0%
• Development of Geological reports, including research	min 0.2%
• Supervision Services	1.0 – 3.0%



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Thank you!

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УДРУЖЕЊЕ ИНЖЕЊЕРА КОНСУЛТАНТА СРБИЈЕ



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