



**EU PROJECT PREPARATION FACILITY**

*PPF-Serbia's perspective for sustainable growth*



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Department for  
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# Uvod u ugovore o građevinarstvu i FIDIC ugovori



# Opšte o ugovorima

## Ugovor ...

- ... predstavlja formu međusobnih prava i obaveza. U građevinarstvu jedna strana prima robu ili uslugu, a druga strana novac kao naknadu za izvršeno
- ... može biti usmeni ili u pisanom obliku (ali ne u građevinarstvu)
- ... mora sadržavati bitne elemente...



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# Opšte o ugovorima

## Ugovor ...

- stvara pravni odnos
- je dvostrani pravni posao
- je saglasna volja dve ili više strana

## Pravni subjekti:

- Fizička ili pravna lica
- Imaju pravnu i poslovnu sposobnost



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# Opšte o ugovorima

## Uslovi za zaključenje ugovora:

- Objektivno moguć
- Pravno dopušten
- Moralno dopušten



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# Opšte o ugovorima

## Pravni sistem – Code civil

- Ugovori su razvrstani u vrste razrađene u odgovarajućem zakonu - Zakon o obligacionim odnosima
- Ugovori navedeni u zakonu su imenovani ugovori (ugovori u privredi)

## Pravni sistem – Common Law

- Ne postoji sistematizacija ugovora prema zakonu\*\*\*
- Ugovori se formiraju prema principima sadržanim u sudskim odlukama\*\*\*
- Ugovori moraju biti detaljni jer se ne oslanjaju na zakone



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# Opšte o ugovorima

## Vrste izvora prava:

- Akti državnih organa: ustav, zakoni, uredbe
- Običajno pravo
- Pravna nauka
- Autonomna regulativa
- Priroda stvari
- Standardi



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# Opšte o ugovorima

## Izvori autonomne regulative:

- FIDIC
- Svetska banka – IBRD
- UNIDO modeli ugovora
- UNCITRAL modeli ugovora
- Evropska unija - PRAG



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# Opšte o ugovorima

## Šta je ugovor:

- Zakon o obligacionim ugovorima 29/78....31/93...
- Član 1: “Ovim zakonom uređuju se obligacioni odnosi koji nastaju iz ugovora.....”



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# Opšte o ugovorima

## Kada je ugovor zaključen:

- Član 26: “... kad su se ugovorne strane saglasile o bitnim sastojcima ugovora”
- Glava 13: Član 630-647



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# Opšte o ugovorima

## Još malo o ZOO:

- Član 636, 639 – “klizanje” cene
- Član 644, 647 – odgovornost, nedostatci



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# Opšte o ugovorima

## Posebne uzanse o građenju Sl. list SFRJ", br. 18/77

- 127 uzansi
- Uzansa 2: "Posebne uzanse o građenju primenjuju se ako su ugovarači pristali na njihovu primenu.

Smatra se da su ugovarači pristali na primenu uzansi ako primena uzansi nije ugovorom o izvođenju radova na građevinskim objektima (u daljem tekstu: ugovor) isključena u celini ili delimično.

## ZOO Član 1107

- "Odredba opštih ili posebnih uzansi kojom se utvrđuje pretpostavka da su ugovorne strane pristale na primenu, ukoliko ih nisu ugovorom isključile, neće se primenjivati posle stupanja na snagu ovog zakona"



# FIDIC i ZOO

## ZOO Član 142

- 1) Opšti uslovi određeni od strane jednog ugovarača, bilo da su sadržani u formularnom ugovoru, bilo da se na njih ugovor poziva, dopunjuju posebne pogodbe utvrđene među ugovoračima u istom ugovoru, i po pravilu obavezuju kao i ove,
- 2) Opšti uslovi moraju se objaviti na uobičajeni način,
- 3) Opšti uslovi obavezuju ugovornu stranu ako su joj bili poznati ili morali biti poznati u času zaključenja ugovora,
- 4) U slučaju neslaganja opštih uslova i posebnih pogodbi važe ove poslednje.

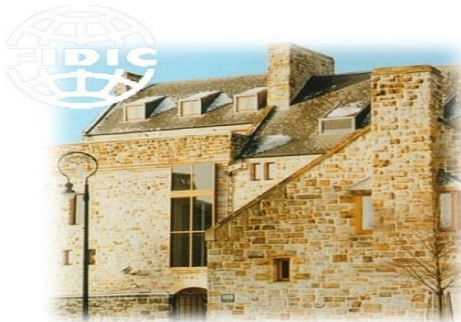


# FIDIC

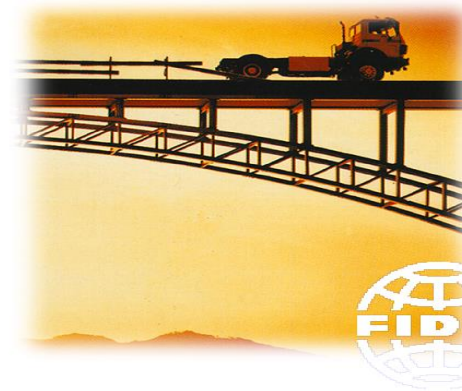
**CONSULTANT'S  
RESPONSIBILITY  
TOWARDS  
THE SOCIETY**



**PROMOTES BUSINESS INTERESTS  
OF SUPPLIERS OF TECHNOLOGY-  
BASED INTELLECTUAL SERVICES  
FOR THE BUILT AND NATURAL  
ENVIRONMENT**



**ESTABLISHED IN  
1913  
(TODAY HAS  
84 MEMBERS)**



**HEADQUARTERS IN  
SWITZERLAND  
(Geneve)**



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(36) TRAINING & EVENTS

(102) MEMBERS



Conference

#### PARTNERS & SPONSORS



## CONTRACTS AND AGREEMENTS



**Construction Contract  
2nd Ed (2017 Red Book)**  
from 43.00 € to 195.00 €



**Plant and Design-Build  
Contract 2nd Ed (2017  
Yellow...**  
from 43.00 € to 195.00 €



**EPC/Turnkey Contract  
2nd Ed (2017 Silver  
Book)**  
from 43.00 € to 195.00 €



**Construction Contract  
1st Ed (1999 Red Book)**  
from 40.00 € to 195.00 €

## BUSINESS PRACTICES



**FIDIC Guide to Practice,  
The Business of a...**  
115.00 €



**Guidelines for Integrity  
Management System in  
the...**  
20.00 €



**Project Sustainability  
Management -  
Applications...**  
from 15.00 € to 20.00 €



**Quality Based Selection  
(QBS) Guidelines (2011)**  
from 15.00 € to 20.00 €

## PROMOTED BOOKS



**State of the World Report  
2015: Water Challenges**  
25.00 €



**Model Representative  
Agreement 1st Edition  
(2013)**



**FIDIC Procurement  
Procedures Guide 1st Ed  
(2011)**



**Construction (1999 Red  
Book) Subcontract 1st  
Ed (2011)**



# FIDIC

## Šta je FIDIC?

- FIDIC je osnovan 1913 posle konferencije “Prvi međunarodni kongres inženjera konsultanata i inženjera eksperata”,
- Osnivači su Nacionalna udruženja Belgije, Francuske i Švajcarske
- Srbija osnovala Nacionalno udruženje 2008, a 2009 postala punopravni član.



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# FIDIC

## Razvoj FIDIC-a

- Velika Britanija postala član 1946
- Jedni od prvih opštih uslova ugovora u VB izdati su 1903 od strane RIBA (RIBA Form), danas JCT
- 1945 ICE Form – Institut građevinskih inženjera
- 1956 ACE Form – na osnovu IV izdanje ICE (prvi ugovor u međunarodnim ugovorima u građevinarstvu)



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# FIDIC

## Razvoj FIDIC-a

- 1957 – Prvo izdanje “Conditions of Contract (International) for Works of Civil Engineering Construction” od strane FIDIC i FIBTB
- Revizije 1963, 1977, 1987 (sa dopunama 1992)
- 1963 – Žuta knjiga
- 1995 – Narandžasta knjiga



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# FIDIC

## Stari standardni ugovori (pre 1999):

- *Works of Civil Engineering Construction (RED)*
- *Design-Build and Turnkey (ORANGE)*
- *Electrical and Mechanical Works (YELLOW)*



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# FIDIC “old” RED Book

## *Conditions of Contract for Works of Civil Engineering Construction – part I and II*

- Za građenje
- Četvrto izdanje 1987, izmene 1992, dopuna 1996
- Za upotrebu u međunarodnim ugovorima
- Obračun po predmeru – jedinici mere



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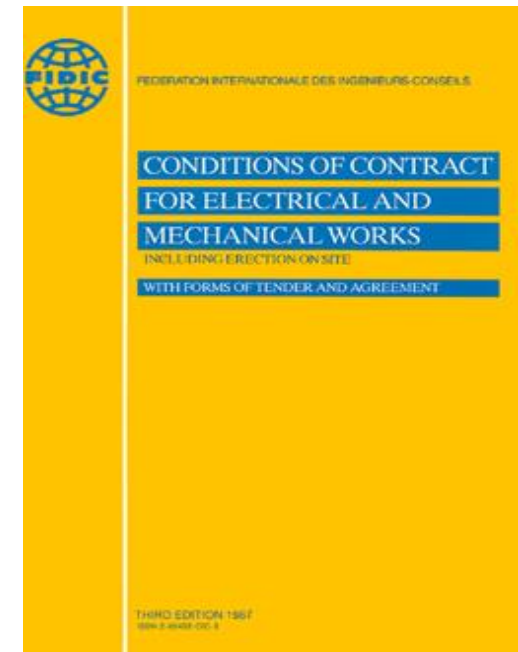


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# FIDIC “old” YELLOW Book

## *Conditions of Contract for Electrical and Mechanical Works – part I and II*

- Za isporuku opreme i montažu
- Treće izdanje 1987
- Za upotrebu u međunarodnim ugovorima
- Obračun po napretku



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# FIDIC “old” ORANGE Book

## *Conditions of Contract for Design-Build and Turnkey – part I, II, III and IV*

- Za izradu i montažu opreme i građevinske radove (manji deo)
- Prvo izdanje 1995
- Za upotrebu u međunarodnim ugovorima
- Izvođač je odgovoran za projektovanje



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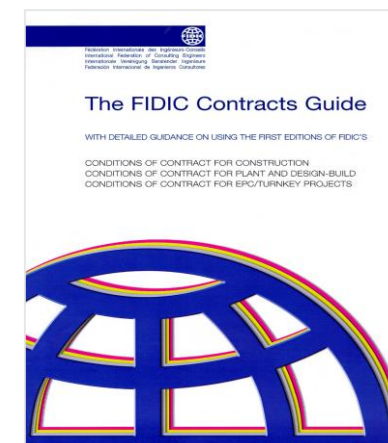
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# FIDIC-ova “duga”



# Kontinuitet

Projekat  
obezbeđuje  
Naručilac



Projekat radi  
Izvođač



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# Glavne karakteristike novih ugovora

- Balansirani – pravedna raspodela rizika, prava i obaveza između ugovornih strana,
- Iskustvo – brojni “case studies” obrađeni u pripremi novih dokumenata – Univerzitet u Redingu,
- Prihvaćeni – poznati su i u širokoj upotrebi u međunarodnim ugovorima,
- Podrška – preporučeni ili zahtevani od međunarodnih finansijskih institucija, WB, EBRD, itd.
- Efektivni, jasni i kompletni uslovi ugovaranja,
- Odredbe za presuđivanje u sporovima (DAB).



# Novi koncept u ugovorima - Rizik

- Koja strana može najbolje predvideti rizik?
- Ko može najbolje kontrolisati rizik?
- Koja strana može najbolje preuzeti rizik?
- Koja strana najviše trpi ili ima koristi ako se rizik pojavi?



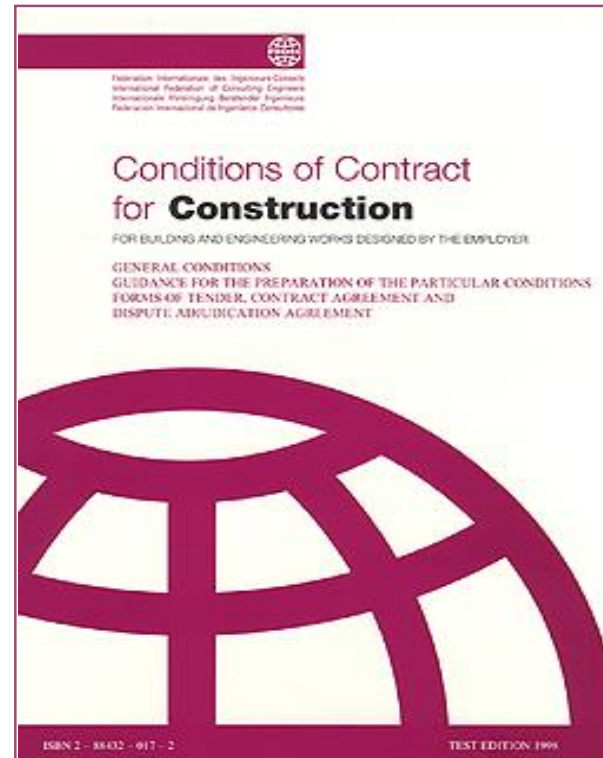
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# Nova Crvena knjiga – RED Book



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# Nova Crvena knjiga – RED Book

Conditions of Contract for Construction. For Building and Engineering Works designed by the Employer

Ugovor o izgradnji (Uslovi ugovora za građevine i građevinske radove po projektu Naručioca)

- “Najgrađevinskiji” ugovor
- Inženjer radi za Naručioca
- Naručilac je odgovoran za projektnu dokumentaciju
- Obračun po predmeru i stvarno izvedenim količinama\*
- Rizik je podjednako raspodeljen

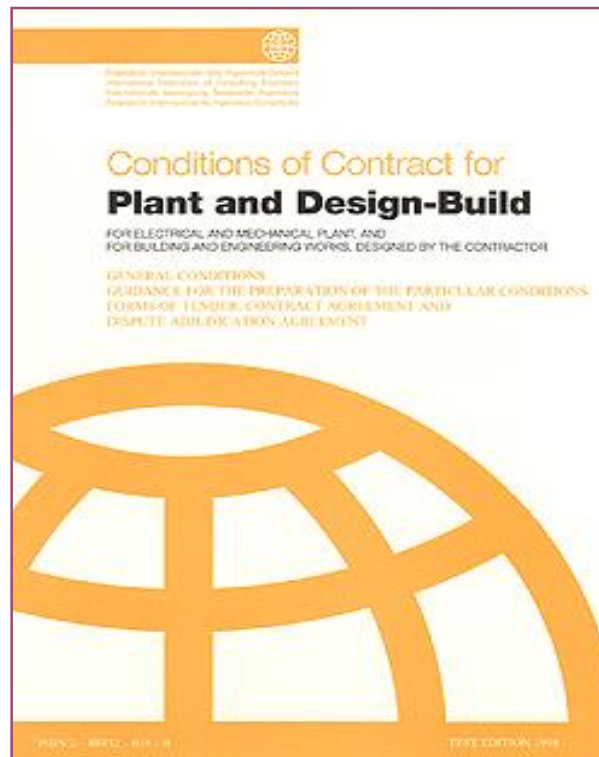


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# Nova Žuta knjiga – YELLOW Book



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# Nova Žuta knjiga – YELLOW Book

- Conditions of Contract for Plant & Design-Build For Electrical & Mech. Plant & For Building & Engineering Works Designed by the Contractor
- Ugovor projektuj-izgradi (Uslovi ugovora za elektro i mašinska postrojenja, i za građevinske i inženjerske radove po projektu Izvođača)
  - Upotreba za projekte gde oprema ima značajan udeo u ukupnoj vrednosti
  - Izvođač priprema projektnu dokumentaciju
  - Inženjer radi za Naručioca
  - Ukupna - paušalna cena
  - Izvođač odgovoran za *fitness for purpose*\*



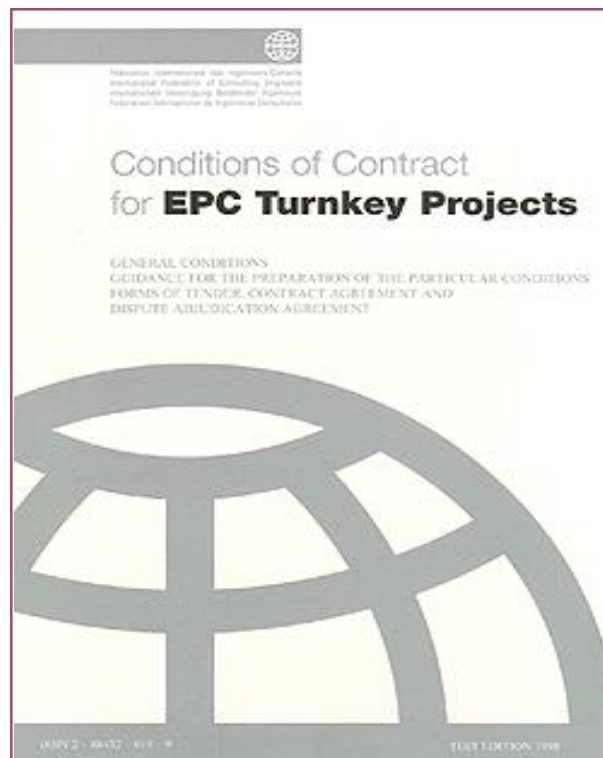
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# Nova Srebrna knjiga – SILVER Book



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# Nova Srebrna knjiga – SILVER Book

- Conditions of Contract for EPC Turnkey Projects
- Ugovor INI i ključ u ruke:
  - Inženjering, nabavka, izgradnja – Engineer, Procure, Construct,
  - Izvođač snosi odgovornost za projektnu dokumentaciju,
  - Izvođač odgovara i za greške u Zahtevima Naručioca (može da odstupi da ispuni fitness for purpose),
  - Naručilac može imati predstavnika (Representative).



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# Nova Srebrna knjiga – SILVER Book

- Naplata u procentu od ukupne paušalne cene
- Može biti “ključ u ruke” – “potpisivanjem ugovora Izvođač preuzima svu odgovornost ...”
- Pogodan za procese i postrojenja
- Veliki deo rizika snosi Izvođač
- **EPC/Turnkey Contract: not advised for high unforeseen risk –**  
**[www.fidic.org](http://www.fidic.org)\*\*\***



# Zajedničke (nove?) karakteristike

## Specifične odredbe u vezi sa obavezama strana

- Zahtevi od Izvođača
  - Rokovi za dostavljanje Zahteva,
  - Sistem obezbeđenja kvaliteta,
  - Mesečni izveštaji o napredovanju radova.
- Zahtevi od Naručioca
  - Finansijski aranžmani,
  - Inženjer je deo osoblja Naručioca.



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# Zajedničke (nove?) karakteristike

## Bolje administrativne procedure

- Procedure su dinamične (npr. Potraživanja 2.5 i 20.1 imaju vremenske okvire. Nepoštovanje može dovesti do gubljenja prava)
- Zaštita intelektualnih prava
- Problemi plaćanja
  - Finansijski aranžmani 2.4
  - Zatezna kamata +3% od referentne kamatne stope
  - Pravo na raskid ugovora posle 42 dana



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# Zajedničke (nove?) karakteristike

## DAB

- Uočene prednosti USA i UK sistema za rešavanje sporova,
- Inženjer ima kvazi-medijatorsku ulogu,
- Dispute Adjudication Board.



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# Kratka forma ugovora – GREEN Book



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# Kratka forma ugovora – GREEN Book

## *The Short Form of Contract*

- Opšti uslovi sa 15 članova,
- Za jednostavne radove manje vrednosti ili repetitivne radove,
- Posebnih uslova nema\*\*\* (specifičnosti su u Dodatku (*Appendix*),
- Nema *Inženjera*,
- Projektnu dokumentaciju priprema Naručilac ili Izvođač.



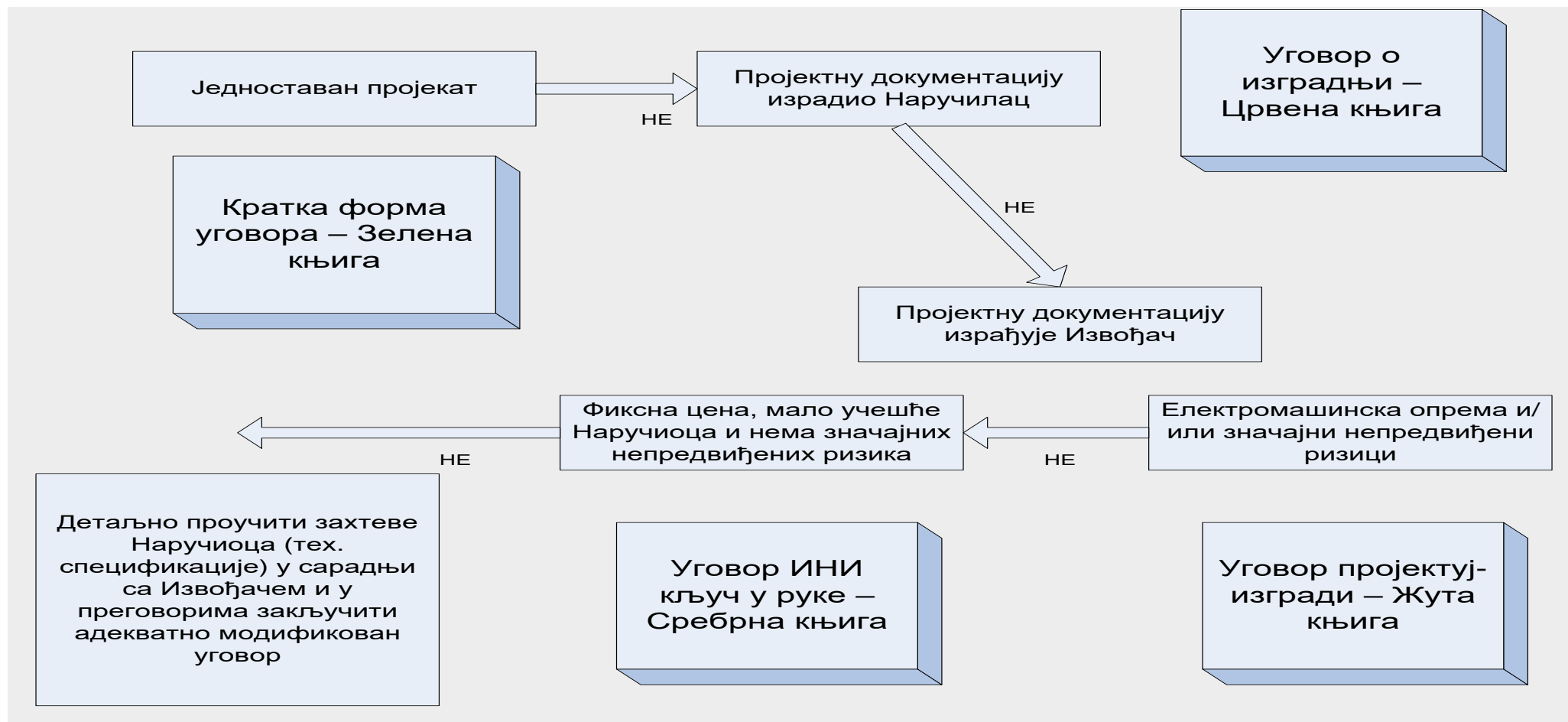
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# Izbor tipa ugovora



# FIDIC Vodiči

- FIDIC vodič za ugovore – FIDIC Rainbow,
- The White Book Guide,
- Vodič za izradu posebnih uslova ugovora,
- Tenderska procedura i formati za predkvalifikaciju,
- *Quality Based Selection* – izbor konsultanta zasnovan na kvalitetu,
- ISO, Env, BIM.



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## RED vs. YELLOW

Članovi u Crvenoj knjizi	Žuta knjiga
1. Opšte odredbe	Slično
2. Naručilac	Slično
3. Inženjer	Slično
4. Izvođač	Slično
5. Imenovani podizvođač	Projekat
6. Osoblje i radna snaga	Slično
7. Postrojenja, materijali...	Slično



## RED vs. YELLOW

Članovi u Crvenoj knjizi	Žuta knjiga
8. Početak, kašnjenje...	Slično
9. Ispitivanja po završetku	Slično
10. Preuzimanje radova	Slično
11. Odgovornost za nedostatke	Slično
12. Merenje i procena	Ispitivanje po završetku
13. Izmene i korekcije	Isto
14. Ugovorna cena i plaćanje	Isto



## RED vs. YELLOW

Članovi u Crvenoj knjizi	Žuta knjiga
15. Raskid od strane Naručioca	Isto
16. Obustava i raskid od strane Izvođača	Isto
17. Rizik i odgovornost	Isto
18. Osiguranje	Isto
19. Viša sila	Isto
20. Potraživanja....	Isto
DAB	Različito







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**Louis Berger | giz**  
A project implemented by the  
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# Pitanja i odgovori

## [www.PPF6.rs](http://www.PPF6.rs)



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# Hvala na pažnji!



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