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Projekat za bolje uslove poslovanja
Business Enabling Project

USAID Business Enabling Project in Serbia Scope of Work for Inspections Reform Legal Specialist (Consultant)

Background

USAID's Business Enabling Project, implemented by Cardno Emerging Markets USA, is a five year initiative launched in January 2011. The purpose of the Project is to help the Government of Serbia improve the competitiveness of the Serbian economy and its private sector businesses. The Project will provide technical assistance, training, and other support to improve the business enabling environment, maintain macroeconomic stability, and further develop financial markets. The Project is demand driven: all activities are based on the priorities of the private sector and Government. The Project's activities are described in more detail on the Project's website: www.bep.rs.

The Business Enabling Project's Component 1, Business Regulation and Economic Governance, has a goal to streamline laws, regulations, and institutions, to improve regulators' capacity to implement laws and improve analysis and public-private dialogue.

The project's approach to achieving reforms is to help the Government work closely with the private sector and outside experts to make reforms that improve business competitiveness. The steps in this collaborative reform process include:

- Determine priorities by engaging with businesses, including surveys of businesses, and using regulatory impact assessment and other tools to measure the benefits of reforms
- Build demand for reforms through outreach and education
- Partner with the Government to plan and implement various priority reforms
- Build Government and private sector capacity to properly implement and sustain reforms
- Help the Government and private sector to monitor reform efforts.

These activities will reduce the time and money spent by Serbian businesses to comply with laws and regulations and will help the Government to be more efficient. The activities will also enable businesses to attract necessary investment at an appropriate cost. As result, Serbian businesses will be able to aggressively compete in the global economy. This will lead to export-led economic growth and increased employment.

Need for Inspections Reform

Unlike other legal and economic systems in the region and other transition countries, Serbia has to date not undertaken a comprehensive and thorough reform of inspection bodies and inspection oversight. This is one of the rare fields where reforms have yet to be carried out. For this reason, the situation regarding inspection oversight has been constraining the competitiveness of Serbia's economy in the global market and has had an adverse impact on doing business in the domestic market. In the 2012 Business Survey, carried out by USAID BEP, as many as 69 percent of all business people said that inspections affected their operations negatively. The Survey found that inspections visited each business on average slightly less than four times each year, with managers having to devote some 35 working hours to these visits. More than one-half of all respondents cited the absence of an efficient mechanism

for complaints against inspectors; the inadequacy of regulations governing inspection oversight; and the lack of coordination and overlapping powers and controls of the various inspection bodies. As many as 36% of all respondents said that corruption was an issue in inspection oversight.

Businesses have remarked that inspection oversight was obviously not being planned in accordance with likely risk of abuse or infringement. Also evident is the lack of coordination in the fragmented organization of inspection oversight. Due to this, inspection visits are excessively frequent and take too long to complete; the powers of the various inspections overlap: they review the same matters reviewed more than once, often interpreting the same legislation inconsistently. Businesses feel that inspectors are often under-trained, and that penal policy is out of proportion to the severity of infringements and the financial standing of businesses. A major issue in practice is the widespread view that inspection bodies should primarily focus on strictly controlling and penalizing businesses – sometimes objects of prejudice and viewed as criminals – meaning that inspectors' success is sometimes measured by how much they have collected in fines and how many charged they have filed, rather than by the degree of compliance they have ensured. The final outcome of this is the closure of many businesses, less investment, fewer jobs, and greater unemployment.

The powers of inspections in tackling the shadow economy are hugely important, but insufficiently clearly regulated. A study of the shadow economy commissioned by USAID BEP showed that the total extent of the informal economy in Serbia stood at 23.6 percent of GDP, or 680.3 billion dinars. This research also revealed that Serbia's shadow economy was greater than the average of 11 selected countries over the period studied.

To overcome the current issues, a single, systemic and reforming Inspection Law needs to be adopted without delay. The enactment and implementation of this law should ensure that public administration, with only its current resources at its disposal, achieves better results in safeguarding public interests and ensures that Serbia's economy becomes more competitive by reducing administrative costs, as well as reducing the case load of courts.

In that sense, USAID BEP in cooperation and interaction with the leading business associations in Serbia and Serbian business inspection bodies have to date held a number of regional roundtables, focus groups (thematic discussions), meetings and sessions resulting in concrete documents defining preferable directions of the reforms in this area. Additionally, USAID BEP has engaged an internationally renowned inspections reform expert who conducted review of consistency of these reforms blueprints with best international and particularly EU practice and prepared a report on it.

The Ministry of Justice and State Administration (MoJSA) formed in 2013 the Working Group for development of the Law governing inspection oversight. USAID BEP intends to engage local legal specialist (Consultant) with significant expertise and experience in inspection system and related areas to inform the work of the Working Group with relevant expertise and experiences. The Consultant will act as a sounding board and corrective factor for key reform proposals that will be discussed during the work on development of the new legal framework for inspections, and will also provide expert input for implementation of specific segments incorporated in the inspection reform.

USAID BEP expects the new legal framework for inspections to be adopted and implementation started in 2014. The crucial elements of the new legal and institutional framework for inspections include: risk-based system, preventive actions rather than sanctions, coordination of inspections, combatting grey economy, building inspections capacities, transparency and evaluation of work of inspections. Creation

of the new, reform legislative solutions for inspection control, including transposition and integration of the best inspection practice into the future Law on Inspections, should lead to alleviation of the regulatory and administrative burden on businesses, increase of businesses' compliance, reduction of informal economy, and creation of more favorable business and investment environment.

Scope of Work

This assignment will be part of the BEP project's Component 1: Business Regulation and Economic Governance activities, and is incorporated in BEP's Objective 1: Improve and streamline business regulation – Task 1: Improve Inspections Operations and Organization.

Tasks

1. Participate in the discussions on and assist development of the final version of, Concept of the Law on Inspections;
2. Prepare analyses of specific aspects of the best international practice and experiences with inspections reform, with commentary on their relevance for the Draft Law on Inspections in the context of Serbian regulatory, institutional, administrative and economic system;
3. Provide assistance with drafting the Law on Inspections;
4. Participate in the public discussion and outreach activities regarding the Draft Law and provide expert assistance in incorporating the inputs obtained during public discussion in the Draft Law that will be submitted for the approval by the GoS;
5. Provide expert assistance in preparing the justification of the Draft Law and in responding to comments received by the other State bodies and in processing amendments submitted in the Parliamentary procedure.

In performing these tasks, the Consultant will work closely with MoJSA representatives and USAID BEP international experts and staff.

Level of Effort

Consultant will have up to 35 (thirty-five) days of engagement for completion of the tasks.

Period of Performance

Period of performance of this SoW is from July 15, 2013, to July 15, 2014. Maximum number of days under this SoW cannot exceed 35 (thirty-five) days.

Deliverables

Specific work products to be developed by Consultant include:

- 1) Concept of the Law on Inspections;
- 2) Analyses of specific aspects of the best international practice and experiences with inspections reform, with commentary on their relevance for the Draft Law on Inspections in the context of Serbian regulatory, institutional, administrative and economic system as deemed necessary by the MoJSA and USAID BEP;

- 3) Draft Law on Inspections with justification completed and officially submitted for public discussion;
- 4) Draft Law on Inspections publicly presented, adjusted in line with constructive comments obtained during the public discussion and approved by the GoS;
- 5) Amendments submitted on the Bill on Inspections responded to.

Consultant will furnish drafts of deliverables to USAID BEP and MoJSA duly and timely. USAID BEP will provide its comments in written timely after receiving the draft deliverable through Milan Stefanovic, Expert in the USAID BEP Business Regulation and Economic Governance Team.

Consultant is obliged to submit to USAID BEP the final report (STTA Completion Report) after completing this assignment outlining the work of the Consultant and the results achieved.

All materials must be prepared in English, unless expressly authorized otherwise in writing by the Cardno Emerging Markets representative.

To Apply

1. Requirements for candidates:
 - a. Experience in comparative analyses of institutional and regulatory frameworks
 - b. Proven expertise in the area of administrative law
 - c. Good understanding of inspections and business environment related issues
 - d. Experience in the legislative drafting
 - e. Excellent writing and good presentational skills.
2. Applications including CV clearly showing adequate technical background and relevant work experience should be sent by e-mail to: info@bep.rs, by July 8, 2013. Only short-listed candidates will be contacted.