

**RULES OF PROCEDURE OF THE  
APPEALS COMMISSION REGARDING  
CALLS FOR TENDERS LAUNCHED AS  
PART OF THE FLOOD PROTECTION  
MEASURES PROJECT IN REPUBLIKA  
SRPSKA  
(EIB number 2017 - 0679)**

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Acting on the Decision of the Government of Republika Srpska to establish a temporary working body to hear appeals arising from a public procurement procedure for the selection of contractors as part of the flood protection measures project in Republika Srpska [number: 04/1-012-2-1791/21, dated 17 June 2021] which is financed from funds provided under the Finance Contracts Between Bosnia and Herzegovina and Republika Srpska and the European Investment Bank of 17 and 20 December 2019 (FI N° 88484) (EIB number 2017-0679) authorised by the Decision of the National Assembly of Republika Srpska accepting the debt of the Republika Srpska owed to the European Investment Bank for the Flood Protection Measures Project in Republika Srpska (Official Gazette of Republika Srpska, No. 60/20), the Appeals Commission for hearing appeals regarding calls for tenders launched as part of the flood protection measures project in Republika Srpska (Appeals Commission) at its meeting of 14 April, 2022 hereby adopts the following:

## **RULES OF PROCEDURE OF THE APPEALS COMMISSION**

### **1. GENERAL PROVISIONS**

- 1.1. By way of the Decision of the Government of Republika Srpska [number: 04/1-012-2-1791/21, dated 17 June 2021] the Appeals Commission was established in order to provide a transparent, fast and effective mechanism for resolving objections/complaints/appeals (hereinafter jointly referred to as: appeals) filed against decisions adopted by JU "Vode Srpske" ( Promoter) regarding calls for tenders launched as part of the flood protection measures project in Republika Srpska (Project) financed by loans from the European Investment Bank (EIB).
- 1.2. These Rules of Procedure shall govern the organisation, hearing of appeals, as well as other matters important for the work of the Appeals Commission.
- 1.3. The Appeals Commission shall act in accordance with the principles of transparency, confidentiality, equal treatment and efficiency as well as in a timely manner, independently and without relying on the Promoter and other entities responsible for acts and actions that a party to/participant in the call for tenders or other interested party disputes.
- 1.4. The Appeals Commission shall consider and decide on appeals filed with it and act and make its recommendations and decisions in accordance with:
  - ✓ each individual tender documentation,
  - ✓ professional rules and rules of professional ethics,
  - ✓ [Guide to Procurement for Projects financed by the European Investment Bank](#), and
  - ✓ available evidence.
- 1.5. The provisions of these Rules of Procedure are binding on all members of the Appeals Commission, and all other persons called on to participate in the work of the Appeals Commission.

## **2. ORGANISATION AND WORK OF THE COMMISSION**

### **Composition of the Appeals Commission**

- 2.1. The Appeals Commission shall consist of three voting members, and a Secretary of the Appeals Commission.
- 2.2. The members and Secretary of the Appeals Commission were appointed by the Decision of the Government of Republika Srpska [number: 04/1-012-2-1791/21, dated 17 June 2021].
- 2.3. At the inaugural sitting/meeting, after the adoption of these Rules of Procedure, the members of the Appeals Commission shall elect from among their members the Chairperson of the Appeals Commission by a simple majority of the total number of members.
- 2.4. The Chairperson of the Appeals Commission shall represent the Appeals Commission; convene sittings/meetings of the Appeals Commission and chair them, sign acts adopted by the Appeals Commission; ensure that the Appeals Commission discharges its duties in a timely manner and ensure the application of these Rules of Procedure.
- 2.5. Members of the Appeals Commission shall be entitled and required to:
  - i. propose the holding of and agenda for sittings/meetings of the Appeals Commission;
  - ii. participate in the work and regularly attend the sittings/meetings of the Appeals Commission;
  - iii. participate in discussions and adoption of appeal reports and other acts falling under the remit of the Appeals Commission;
  - iv. be briefed on matters relevant to the proper discharge of duties by a member of the Appeals Commission;
  - v. perform other duties falling under the remit of the Appeals Commission.

### **Conflicts of interest**

- 2.6. The chairperson or a member of the Appeals Commission shall be disqualified from hearing an appeal where there is a personal interest that he or a person related to him may have in connection with an appeal is being heard before the Appeals Commission.
- 2.7. The Chairperson of the Appeals Commission shall adopt the decision to disqualify a member.
- 2.8. The remaining members of the Appeals Commission shall adopt the decision to disqualify the Chairperson of the Appeals Commission.
- 2.9. These provisions do not limit the application of the disqualification rules laid down in the EIB's codes of conduct.

### **Quorum and decision-making**

- 2.10. In exercising its rights and duties governed by these Rules of Procedure, the Appeals Commission shall act and take decisions collectively.
- 2.11. The presence of all members of the Appeals Commission shall be required for the legitimate conduct of business and decision-making at a sitting of the Appeals Commission.
- 2.12. The Chairperson of the Appeals Commission shall state whether all members are present (quorum is met) at the beginning of the sitting/meeting.
- 2.13. Where the quorum to conduct business and take decisions is not met, the Chairperson shall convene a repeat meeting of the Appeals Commission, as a rule no later than three (3) days from the convened but cancelled meeting.

### **Sittings and work of the Appeals Commission**

- 2.14. The Appeals Commission shall set the work schedule according to work requirements.
- 2.15. As a rule the Appeals Commission shall perform duties falling within its remit at sittings/meetings of the Appeals Commission.
- 2.16. Following receipt of a public procurement appeal, the Chairman of the Appeals Commission shall convene a sitting/meeting by written invitation, as a rule at least two (2) days prior to the day of the sitting/meeting.
- 2.17. Exceptionally, when there are justified reasons for urgent action, a sitting/meeting of the Appeals Commission may be convened within less than two (2) days, and the material may be furnished to the members of the Appeals Commission at the very beginning of the emergency sitting/meeting.
- 2.18. An invitation for the sitting/meeting shall contain: the date, time and venue, proposed agenda including the case number being heard, name of the invitee and the capacity in which he is invited if the sitting/meeting is to be attended by other persons except the members of the Appeals Commission.
- 2.19. Along with the invitation to the sitting/meeting, the members of the Appeals Commission shall be provided with the proposed agenda, materials for the sitting/meeting, as well as the minutes of the previous sitting/meeting of the Appeals Commission.
- 2.20. An invitation to the sitting/meeting together with the materials shall be sent electronically to the e-mail addresses provided by the members of the Appeals Commission to the Secretary of the Appeals Commission.
- 2.21. After the Chairperson of the Appeals Commission determines whether the quorum to conduct business and take decisions is met, the Chairperson of the Appeals Commission shall open the sitting/meeting of the Appeals Commission and adopt the minutes of the previous sitting/meeting and the agenda for the sitting/meeting at hand.
- 2.22. Each member of the Appeals Commission shall be entitled to raise objections concerning any part of the course of the sitting and/or work of the Appeals Commission. Objections shall be recorded in the minutes. The Appeals Commission shall decide on objections by way of a conclusion.

- 2.23. Minutes shall be kept of sittings/meetings of the Appeals Commission, which shall be provided to the members of the Appeals Commission together with the proposed agenda for the next sitting/meeting.
- 2.24. The minutes of a sitting/meeting shall contain: number, date of the sitting, start and finish time of the sitting, composition of the Appeals Commission, agenda containing the case code, summary of the Appeal Report or summary of other acts of the Appeals Commission, as well as, if any, dissenting opinions of Appeals Commission members.
- 2.25. The Chairperson of the Appeals Commission and the minute keeper/secretary of the Appeals Commission shall sign the minutes of the sitting/meeting.

### **Electronic sittings of the Appeals Commission**

- 2.26. Electronic sittings/meetings of the Appeals Commission may be held by telephone, as well as other audio-visual communication links, in such a way that all persons participating can hear each other and talk to each other at the same time.

### **Technical and administrative duties**

- 2.27. The Secretary of the Appeals Commission shall perform the technical and administrative duties necessary for proper functioning of the Appeals Commission.
- 2.28. The technical and administrative duties to be performed by the Secretary of the Appeals Commission shall include the following:
- i. Receiving appeals and other submissions submitted as part of public procurement appeals;
  - ii. Maintaining a register of Appeals Commission cases;
  - iii. Creating case files and forwarding cases for review;
  - iv. Technical preparation of appropriate written material for the sitting/meeting of the Appeals Commission;
  - v. Attending sittings/meetings of the Appeals Commission;
  - vi. Drawing up minutes of sittings/meetings of the Appeals Commission;
  - vii. Drafting Appeals Commission work reports;
  - viii. Ensuring technical, administrative and other conditions necessary for proper functioning of Appeals Commission sittings;
  - ix. Acting on other orders given by members of the Appeals Commission which are necessary for the unhindered and efficient functioning of the Appeals Commission.

### 3. HEARING APPEALS

#### Filing an appeal

- 3.1. A party, party to proceedings and/or an interested party which considers that it is affected by the acts and actions of the Promoter in the public procurement procedure may file an appeal with the Appeals Commission, on transmission by the Promoter.
- 3.2. Appeals filed in the public procurement procedure shall be submitted to the Secretary of the Appeals Commission on the same day they were submitted by registered mail to the address Bulevar Vojvode Bojovića 6-8, 11000 Beograd or electronically to the address: [isidora@aces.rs](mailto:isidora@aces.rs) with *delivery receipt*.
- 3.3. An appeal shall be submitted in the language set down in the tender documentation as the language to be used when appealing a specific public procurement procedure and must specify the act and/or action that the appellant considers harmful, the grounds of the appeal and must be complete and reasoned. The evidence cited by the appellant must be appended to the appeal.
- 3.4. An appeal shall suspend the performance of the act/action that is disputed by the appeal (suspensive effect of the appeal).

#### Register of appeals

- 3.5. The Secretary of the Appeals Commission shall register a received appeal on the same day in the register of cases of the Appeals Commission, in chronological order according to the date and time of receipt.
- 3.6. The Secretary of the Appeals Commission shall create a special case for each appeal received using the ordinal number from the register of Appeals Commission cases.
- 3.7. If several appeals are filed at the same time, they shall be recorded in the register according to the alphabetical order of the surnames or names (for legal entities) of their submitters.
- 3.8. The registered appeals with the accompanying documentation shall be furnished to the Chairperson of the Appeals Commission electronically on the same day to the e-mail address provided by the Chairperson of the Appeals Commission to the Secretary of the Appeals Commission.

#### Preliminary examination of an appeal

- 3.9. Immediately after receiving a registered appeal, the Chairperson of the Appeals Commission shall examine whether procedural conditions exist for reviewing the appeal (timeliness and completeness of the appeal).
- 3.10. An appeal that is not filed within time limit specified in the issued tender documentation shall be untimely, an appeal that does contain the basic elements prescribed as mandatory (provision 3.3 of these Rules of Procedure) in order to be examined and heard shall be incomplete.
- 3.11. If the procedural conditions for reviewing an appeal are not met, the Chairperson of the Appeals Commission shall, within two (2) days of receipt of the registered appeal,

dismiss the appeal as untimely and/or incomplete, and/or filed by an unauthorised person and explain the reasons for the dismissal, and refer the appellant to the appropriate body where the conditions for doing so are met.

- 3.12. If the procedural conditions for reviewing an appeal are met, the Chairperson of the Appeals Commission shall take further steps regarding the Appeals Commission review of, and decision on the submitted appeal.

### **Consolidation of several appeals**

- 3.13. If several parties file appeals, whereby the content of these appeals is based on the same legal and factual situation, and the Appeals Commission is competent to decide on the submitted appeals, the Appeals Commission may consolidate all appeals to deliberate and decide on them in the same procedure.

### **Oral hearing**

- 3.14. The Appeals Commission shall deliberate and decide on submitted appeals directly, as a rule without scheduling an oral hearing.
- 3.15. Exceptionally, if key facts of importance for consideration of the subject matter cannot be determined from the submitted case files in the appeal procedure, the Appeals Commission may schedule and hold an oral hearing, to which it will timely invite the appellant, in order to establish and clarify key facts.
- 3.16. Minutes shall be kept of the oral hearing.

### **Oral proceedings**

- 3.17. When the procedural conditions for reviewing an appeal are met, the Chairperson of the Appeals Commission shall convene a sitting/meeting of the Appeals Commission at which the available data and documentation shall be reviewed.
- 3.18. The Appeals Commission may hold meetings with third parties (external consultants, etc.) if it finds it necessary for reviewing the case at hand.
- 3.19. The objective of holding sittings/meetings is for the Appeals Commission to independently adopt a reasoned appeal report.

## **4. VOTING AND DECISION-MAKING**

### **Voting and decision-making at sittings**

- 4.1. Following completion of the investigation, discussions and deliberations at the sittings/meetings of the Appeals Commission, the Appeals Commission shall render a decision on the appeal in the form of an appeal report.
- 4.2. The appeal report may contain the following outcomes:
- i. Dismissal of the allegations presented in the appeal;



- ii. A statement to the effect that the subject of the dispute has been remedied while the appeal was under review, and on the absence of a need for further action (withdrawal of the appeal, annulment of the call for tenders, etc.);
  - iii. Partial or complete upholding of the allegations contained in the appeal and issuance of recommendations to the first instance body and/or corrective measures to mitigate the consequences of the harmful decision.
- 4.3. The Appeals Commission shall make decisions falling under its remit by a simple majority of the total number of voting members.

#### **Voting and decision-making out of sitting**

- 4.4. In extremely urgent and justified circumstances, when owing to an untimely adopted appeal report or other act of the Appeals Commission, harmful consequences for the parties and/or other parties to the procedure could arise and where it is not possible to convene a sitting of the Appeals Commission, the Appeals Commission may review an appeal without holding sittings/meetings of the Appeals Commission.
- 4.5. The work of the Appeals Commission out of sittings of the Appeals Commission shall be performed by e-mail correspondence between the members of the Appeals Commission.

#### **Appeal report**

- 4.6. An appeal report shall be drafted in English.
- 4.7. An appeal report shall include:
- i. A description of the allegations and relief sought;
  - ii. Background;
  - iii. Regulatory framework;
  - iv. Description of the investigation (action taken);
  - v. Expert opinion of the Appeals Commission;
  - vi. Conclusions of the Appeals Commission;
  - vii. Recommendations of the Appeals Commission (in relation to the expert opinion and conclusions).
- 4.8. The final appeal report together with the case file shall be submitted by the Appeals Commission to the appointed Project Steering Committee (PSC), which shall then direct the Promoter, the first instance body, to implement the measures proposed in the appeal report.
- 4.9. The first instance body, the Promoter, shall submit the appeal report to the parties and/or other parties to the procedure and in accordance with the same shall implement the proposed measures in the specific procedure.
- 4.10. A copy of the finalised appeal report shall be submitted directly by the Appeals Commission to the EIB Project Representative.

- 4.11. An appellant who is not satisfied with an appeal report by the Appeals Commission may initiate an administrative and/or court procedure before the competent authorities of the Republika Srpska in accordance with the tender documentation.

#### **Decision-making time limit**

- 4.12. The Appeals Commission shall decide on and submit the appeal report to the PSC within twenty (20) business days from the date of receipt of the appeal by the Secretary of the Appeals Commission.
- 4.13. The PSC shall submit it to the Promoter within fifteen (15) business days from the date of receipt of the appeal report by the Appeals Commission.

### **5. REPORTING ON THE WORK OF THE APPEALS COMMISSION**

- 5.1. The Appeals Commission shall consider and adopt reports on its work and submit them, on transmission by the PSC, to the Government of Republika Srpska at least once a year within 30 days from the end of the calendar year, whereby the Appeals Commission may submit other reports, notices or proposals when it deems it necessary.
- 5.2. The annual report shall contain data on the total number of appeals reviewed by the Appeals Commission during the reporting period, the manner in which appeals were resolved, as well as the number of unresolved appeals complaints at the end of the reporting period.
- 5.3. On completion of the procurement case, the Appeals Commission shall furnish all documentation to the PSC.

### **6. FINAL PROVISIONS**

- 6.1. The members of the Appeals Commission shall adopt the Rules of Procedure in line with the Decision of the Government of Republika Srpska [number: 04/1-012-2-1791/21, dated 17 June 2021].
- 6.2. These Rules of Procedure shall enter into force on the day of their adoption.

**Chairperson of the Appeals Commission**



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**Milica S. Samardžić**