

SPECIAL REPORT No 7/2022

Pre-contractual audit Public works contracts: Substantial deficiencies and other findings for the year 2021

EXECUTIVE SUMMARY

The Fifth Judicial Section's pre-contractual audit on public works contracts falling within its competence led to the following findings:

- I.** Contracting authorities have made resource to negotiated procedure without observing legal prerequisites; for instance, in order to remedy issues not caused by unforeseeable circumstances.
- II.** Several supplementary contracts were deemed not to be legal, because the relevant additional works came as a result of errors in bill of quantities in initial studies or an impermissible extension of the physical/technical object of the original contracts.
- III.** The fact that the determination of the criteria for the choice of participants and award of contracts has now been disconnected from the classification in specific categories within the Register of Public Works Contractors has not been taken into account in all cases.
- IV.** The contracting authorities have not carried out a proper examination of the offers submitted for tenders of works including a design evaluation, where any violations by the tenderers of the specified technical and design specifications lead to the rejection of the tenders concerned.
- V.** The audit identified omissions in grouping of budget tasks; this constitutes a prerequisite for the proper implementation of the bidding system with individual discount rates for each task group.
- VI.** The tenderers had not renewed the period of validity of their tenders for offer and the corresponding letters of legal guarantee, at the time of the HCA's contractual audit.
- VII.** Legal issues upon which the Judicial Section has already pronounced an expert opinion during its pre-contractual audit work may not be reviewed, due to the exhaustion of domestic remedies in this respect.
- VIII.** The audit identified deficiencies as to the compliance with procedures for environmental licensing or issuing specific or other types of licenses, provided by law and related to the project award maturity.
- IX.** As far as programme contracts are concerned, the Judicial Section pronounced an expert opinion on terms for bringing supplements to approval decisions and waiving ambiguities prior to the conclusion of the contract.