

## **SPECIAL REPORT No 8/2022**

### **Pre-contractual audit of public supply contracts: Substantial misdemeanours and other findings for the year 2021**

#### **EXECUTIVE SUMMARY**

The substantial misdemeanours and other findings resulting from the pre-contractual audit carried out in 2021 by the Sixth Judicial Section on public supply contracts falling within its competence, consist in the following:

- I.** Contracting authorities have used negotiated procedures without prior publication of a call for competition, although the relevant legal prerequisites did not exist; for instance, there were non-unforeseeable events or the authorities used the above procedures to satisfy permanent and non-urgent needs.
- II.** Criteria for economic and financial standing as well as technical and professional ability, which the tenderers should meet, were not related to the proper and efficient implementation of the contracts to be awarded, nor were they quantitatively and qualitatively relevant to the contract objective.
- III.** Several contracting authorities did not carry out a scrutinised examination of the supporting documents and other documentary evidence (certificates, statements and other means of proof as evidence for the absence of grounds for exclusion and for the fulfilment of the selection criteria) submitted by the tenderers.
- IV.** In several cases, the grading of the tenderers' technical offers was not adequately justified.
- V.** Certain modifications of public contracts that were subject to audit, either were not due to unforeseen circumstances, or constituted an unlawful substantial modification of the original contract that should be considered as a new award.
- VI.** The audit identified contracts between entities within the public sector that did not meet the conditions of art. 12 of the Directive 2014/24 and consisted an illegal direct award of contract, without prior procurement procedure.
- VII.** The Judicial Section's acts are definitive as to the legality of the draft contract submitted for audit and the issues tackled, even tacitly, including the legality of the original contractor's awarding documentation.
- VIII.** The audit identified several cases in which public authorities did not meet their responsibility to hold properly a "Public Procurement File" as it is provided by the Greek law, so as to prove the necessity and the estimated cost of the supplies.