

## **SPECIAL REPORT No 9/2022**

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

#### **EXECUTIVE SUMMARY**

The pre-contractual audit carried out in 2021 by the Seventh Judicial Section on the service contracts falling within its competence, led to the following findings:

- I.** Contracting authorities did not implement the norm to award contracts, i.e., the open procedure; they made resource to exceptional procedures (direct award or negotiated procedure without prior publication of a contract notice), without observing the legal prerequisites.
- II.** Contracting authorities have not drawn public procurement budgets correctly; in other cases, they have drawn the respective budget without sufficient specification of the subject to be awarded.
- III.** There has been no commitment of the necessary appropriations to cover the cost of certain contracts.
- IV.** Some contracting authorities did not provide sufficient justification as to their choice not to divide the contractual subject into sections.
- V.** Criteria for economic and technical capacity which the tenderers should meet in certain tendering procedures 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.
- VI.** In some cases of award procedures where the award criterion was the achievement of best value, the contracting authorities chose criteria either not suitable to highlight the qualitative characteristics of the tenders, or were indefinitely formulated.
- VII.** Some contracting authorities did not carry out a scrutinised examination of the tenders submitted to them.
- VIII.** The technical tenders' grading was not adequately justified.
- IX.** The audit identified contract clauses not deemed to be legal, or even deemed to be abusive, in loan agreements between municipalities and banking institutions, to a greater extent, and in contracts under various subjects, to a lesser extent.
- X.** The audit also identified a case of a programme contract, which was actually concealing an attempt for staff recruitment.
- XI.** Amendments to contracts audited did not include additional services or were not due to unforeseen circumstances; in other cases, they constituted an unauthorised substantial modification of the original contract.