

Bondoc și Asociații SCA: A new success in the matter of public procurement brings important clarifications to this area



Bondoc și Asociații SCA has obtained a new favorable solution in the field of public procurement with regard to the legal issues specific to the clarification and finalization phase of the tender documentation prior to the deadline for the submission of bids.

The case mainly covered issues relating to the application and interpretation of the law regarding the procedure for requesting clarifications and the possibility for a contracting authority to change the weighting of the evaluation factors constituting the best value for money award criterion as a subsequent consequence resulting from the application of a remedy.

In this regard, it has been definitively established that the ordering of measures to revise the tender documentation as a remedy by a final judgment does not lead to the nullity of the unchallenged elements of the tender documentation in question, nor does it have a retroactive effect by restarting the award procedure from its initial stage.

Therefore, in this context, for the application and interpretation of the law, the contracting authority is not required to set up a new clarification session having the same duration as initially provided for in the tender documentation, given that the right to request clarifications arises only upon the publication of the contract notice, and no subsequent alleged clarifications may be requested before the deadline for the submission of tenders.

Also, in the same context, a change in the weighting of the evaluation factors constituting the award criterion may be made by adopting a new calculation algorithm when, following a remedy applied, this is to the advantage of the contracting authority without such change being considered as a change of the award criterion.

The complexity of the case was determined not only by the technical nature of the area under consideration, but also by the significantly high amount of the total estimated value of the procurement of more than € 100 million, and the implications of the procurement procedure.

The case confirms once again the capacity of *Bondoc și Asociații SCA* to handle very complex projects, including in highly technical and niche areas.

The team that handled this case on behalf of *Bondoc și Asociații* consisted of Attorney-at-Law **Ioana Katona**, Partner, Attorney-at-Law **Simona Petrișor**, Partner, Attorney-at-Law **Lucian Bondoc**, Managing Partner, Attorney-at-Law **Gabriela Pop**, Managing Associate and Attorney-at-Law **Anca Radu**, Associate.