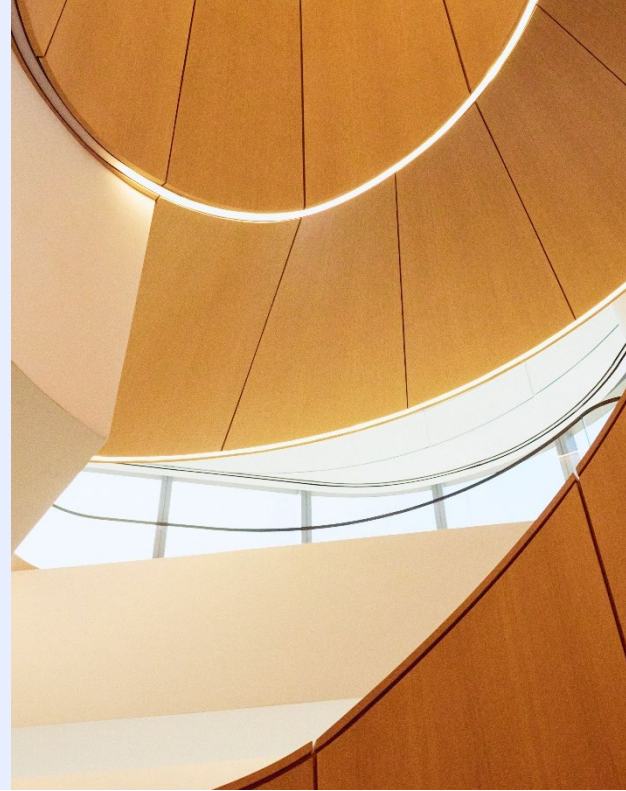


Strategic procedural tool recognized by the High Court for safeguarding the winning bidders' position in public procurement tenders and disputes

April 2026



1 Timing gap: Once the lower-ranking bidder filed a challenge, the winning bidder's deadline to bring an independent challenge was often considered expired, despite its emerging interest to challenge.

2 Limited procedural role: Divergent case law restricted the winning bidder to an accessory intervention, denying standing to directly challenge the competitor's offer.

3 Post-re-evaluation deadlock: Where re-evaluation resulted in reversal of rankings, objections to the newly declared winning bidder's offer were often deemed inadmissible, leaving the original winning bidder without an effective remedy.

4 New binding clarification: A winning bidder may file a principal voluntary intervention in a challenge brought by a lower-ranking bidder, significantly strengthening the winning bidder's procedural defence and risk perspectives following re-evaluation.

A recent binding decision of the Romanian High Court of Cassation and Justice clarifies how successful bidders could defend themselves when another bidder challenges the procurement award. The ruling states that a winning bidder may file a *principal voluntary intervention* in a pending challenge filed by a lower ranked bidder. This could significantly strengthen the winning bidders' defensive options and reduce the risk of losing the contract without a full review of competing offers, in the event of bids re-evaluation ordered following the initial challenge.

A Key Procedural Risk for Successful Bidders

Over the past years, one of the most sensitive issues in public procurement disputes has been whether and to what extent a successful bidder can effectively challenge the other lower ranking bidders, in the event the other bidders challenge the procurement award, threatening the winning bid.

A common scenario illustrates the issue clearly:

- Bidder A is declared the winning bidder in a public procurement tender, after which the second-ranked bidder (Bidder B) files a challenge against the award. At this point, Bidder A's interest arises in challenging Bidder B's offer.
 - **Divergent case law at this stage:** In practice, it was considered that Bidder A's deadline to file an independent challenge had already expired by the time it was notified of the challenge filed by Bidder B. Moreover, some courts also considered that Bidder A did not have an interest in challenging the offer submitted by Bidder B. As a result, Bidder A was limited to filing an accessory intervention, merely supporting the contracting authority's position, on the basis that it had no interest in challenging the other lower-ranking bids.
- Bidder A faces the risk that CNSC or the court upholds the challenge filed by Bidder B and orders a re-evaluation of the winning offer.
 - **Procedural deadlock following re-evaluation:** Where the re-evaluation resulted in a reversal of rankings and Bidder A would now have an interest to challenge Bidder B, some courts considered that objections to Bidder B's offer are no longer admissible, given that such offer had not been

Key takeaways

- **Remedy confirmed:** The High Court confirmed that principal voluntary intervention is admissible in pending challenges before the CNSC, resolving divergent case law.
- **Winning bidder's interest clarified:** A successful bidder's interest to challenge a competitor's offer arises once it is challenged, not at the time of award.
- **Strict timing:** Interventions must be filed within 10 days from publication or notification of the challenge.
- **Strategic procedural tool:** Successful bidders may now raise objections against the challenger's offer even after the deadline for an independent challenge has lapsed.
- **Mitigating re-evaluation risk:** The ruling could mitigate the risk of losing the right to challenge the new winner if a re-evaluation overturns the initial result.

previously challenged and was not subject to re-evaluation. As a result, the evaluation of Bidder B's offer had become final and could no longer be challenged after the re-evaluation.

In practice, this was a real recurring scenario that exposed initially winning bidders to the risk of losing valuable contracts without ever having a genuine opportunity to challenge defects in competing lower-ranking bids.

The High Court's Reasoning, in Practical Terms

To put an end to this fragmentation, the High Court of Cassation and Justice (the "**High Court**") issued Decision No. 23/2025, delivered in a recourse in the interest of the law (RIL) and published in the Official Gazette on 27 February 2026.

The ruling provides much-needed clarity and directly affects how bidders could approach litigation risk in public procurement:

- **First**, the public procurement procedural rules (Law no 101/2016) provides that bidders can submit a "voluntary intervention", with no distinction between a *principal voluntary intervention* and *accessory voluntary intervention*. Where the law does not distinguish, neither should the courts.
- **Second**, although a successful bidder has no interest in challenging an award decision while it remains favourable, that interest arises once the award is challenged by a competitor.
- **Third**, if a competitor challenges the award, the winning bidder must be allowed to submit a principal voluntary intervention in the already initiated proceedings, whereby the winning bidder may also challenge the offers submitted by lower-ranking bids.

Therefore, the Court aligned its interpretation with EU case law, recognising the successful bidder's right to act on an incidental basis, and confirming that denying principal intervention would unjustifiably expose successful bidders to contract loss for purely procedural reasons.

Navigating Practice After the High Court's Decision

Since the High Court's decision was published at the end of February, several CNSC panels and courts have already begun to apply the mandatory interpretation set out in Decision No. 23/2025.

However, while the ruling clearly confirms the admissibility of principal voluntary intervention, recent case law shows that its practical application remains uneven. Some courts continue to confine intervention to the issues raised in the original challenge, treating it as a purely defensive tool rather than a functional alternative to an independent challenge against lower-ranking bids. Others adopt a broader reading of the decision, accepting the admissibility of a principal intervention, but key aspects – such as timing or the permissible scope of arguments for the winning bidder – remain open to further debate.

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Way forward

Despite this mixed practice, the High Court's decision now serves as a strong reference point, offering increased procedural comfort and predictability.

From a risk-management perspective, and notwithstanding the still uneven court practice, the message of the High Court's ruling remains clear: whenever a winning bidder is challenged, it is entitled to file a principal voluntary intervention, including to challenge the competitor's offer, as a key means of protecting the award and reducing the risk of contract loss following a re-evaluation driven solely by procedural constraints.

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