

CONTRACTOR SELECTION METHODS

01

Contractor selection methods

There are 9 methods of contractor selection, as prescribed in Clause 1, Article 20 of Law on Public Procurement 2023, including:



- (1) Competitive bidding;
- (2) Limited bidding;
- (3) Direct contracting;
- (4) Shopping;
- (5) Direct procurement;
- (6) Self-execution;
- (7) Community participation;
- (8) Price negotiation;
- (9) Contractor selection in special circumstances.

In addition, the Government shall adopt specific regulations on contractor selection methods other than those specified in Clause 1 of this Article which are (i) preminent and use advanced and modern electronic equipment and facilities; and (ii) procedures and subjects of such methods in conformity with new features of VNEPS and in a manner that ensures competitiveness, fairness, transparency and economic efficiency in bidding.

02

What is **competitive bidding**?

- Competitive bidding is a contractor selection method whereby there is no limit on the number of bidders.
- The competitive bidding method may apply to all packages, except the cases fall within the scope of other contractor selection methods (specified in Articles 22 through 29 of this Law).
- **Note** that in case a contractor selection method other than competitive bidding is adopted, the written application for approval of the contractor selection plan must indicate the reasons for failure to adopt the competitive bidding; the competent person shall decide the adoption of a contractor selection method other than competitive bidding and assume responsibility for his/her decision.

03

What is **limited bidding**?

Limited bidding is a contractor selection method whereby only bidders meeting the requirements of the package are invited to submit bids. It is applied in the following cases:

- Packages have high technical requirements or involve special techniques that can only be satisfied by some bidders;
- The limited bidding method is adopted at the request of the donor that finances the project or package under an international convention or loan agreement.

Compared to the Law 2013

Compared to the Law 2013, the Law on Public Procurement 2023 added the case of "the donor" to the case of limited bidding.

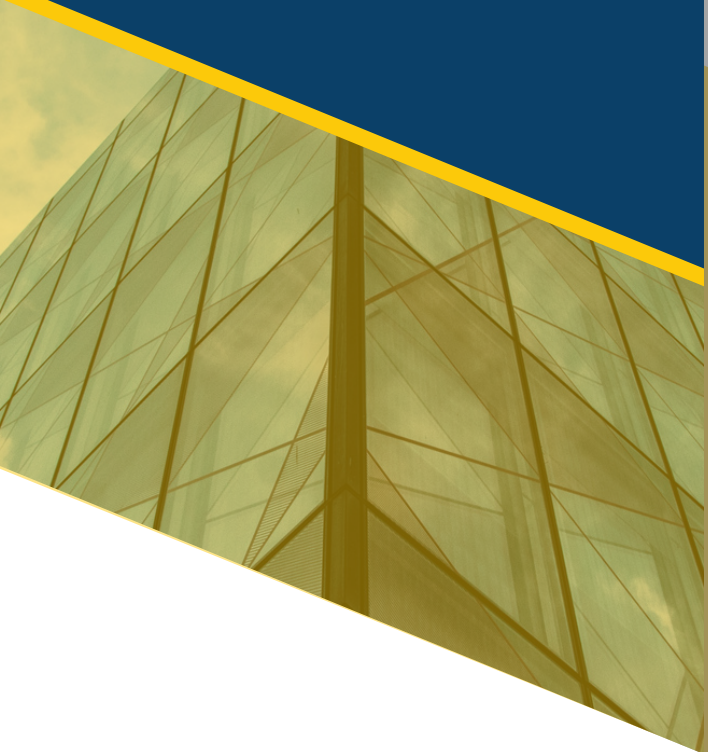
04

What are the cases of application of **direct contracting**?


- Direct contracting applies to:



- Emergency packages which need to be executed to defend national sovereignty and national security; packages which need to be executed to immediately remedy or promptly handle consequences of natural disasters, conflagration, accidents, incidents, calamities or other force majeure events;
- Packages for consulting services, non-consulting services, supply of goods or construction which need to be executed immediately to prevent direct harm to the life and property of local communities or serious impacts on adjacent works;

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- Packages for supply of consulting services, non-consulting services, drugs, chemicals, test equipment, medical devices, spare parts, accessories, facilities, or construction, which need to be executed immediately to serve epidemic and disease prevention and combat or maintain operation of health facilities in urgent cases so as to avoid causing harm to the life and health of people; packages for procurement of drugs, chemicals, test equipment, medical devices, spare parts, accessories used in giving emergency aid to patients as prescribed in the Law on Medical Examination and Treatment in case health facilities lack such drugs, chemicals, test equipment, medical devices, spare parts, accessories; packages for procurement of drugs or medical devices which can be manufactured by the only one manufacturer in the market;
 - Packages which need to be executed to protect state secrets;

- Packages for consulting services which must be purchased from contractors that have previously executed packages in order to ensure technological compatibility and copyright which cannot be purchased from other contractors; packages for procurement of goods or non-consulting services which must be purchased from contractors that have previously executed packages or from manufacturers or their agents in order to ensure their technological compatibility and copyright with existing equipment, machinery, software and services or to meet warranty requirements laid down by contractors or manufacturers which cannot be purchased or acquired from other contractors or manufacturers;
- Packages for research or testing purposes or purchase of intellectual property rights or copyrighted broadcast programs; packages for transport of national reserves for relief and aid purposes, which must be delivered immediately;
- Consulting service packages for preparation of feasibility study reports or construction engineering which are designated to the authors of work architecture designs that win the bid or are selected when they satisfy the prescribed capacity requirements laid down in the Law on construction; packages for construction or restoration of monuments, relief, grant murals and artistic works subject to copyright from the stage of creation to the stage of construction; consulting service packages for preparation of construction plannings which are designated to the authors of construction planning schemes or initiatives that has been successful in the construction planning competition;
- Packages for consulting services, relocation of technical infrastructure facilities to serve the land clearance; packages for consulting services, sweeping and removal of bombs and other explosive objects, demining to prepare for construction sites;

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- Packages for which there is only one bidder capable of performing the contract in the market due to specific technological solution requirements;
 - Packages of nationally important projects eligible for direct contracting according to the National Assembly's resolutions issued when deciding investment guidelines;
 - Packages for leasing of warehouse facilities for impounded goods; packages for hiring of transport and handling services for impounded goods at seaports and concentrated inspection places in case there is only one entity providing such services in the port; packages for import of sporting weapons to serve training activities and annual sports competitions of sports training centers, schools and clubs;
 - Packages of procurement cost estimates whose price ranges from VND 50 million to VND 100 million; packages of investment projects of state-owned enterprises or wholly state-owned enterprises and investment projects defined in the Law on public investment, including: consulting service packages whose price does not exceed VND 500 million, and packages for non-consulting services, procurement of goods, construction, or mixed packages whose price does not exceed VND 01 billion.

What are the cases of direct contracting under the new Bidding Law 2023 compared to the Bidding Law 2013?

Compared to the 2013 Law, the 2023 Procurement Law has added and clarified the following cases of direct contracting:

(1) Packages for supply of consulting services, non-consulting services, drugs, chemicals, test equipment, medical devices, spare parts, accessories, facilities, or construction, which need to be executed immediately to serve epidemic and disease prevention and combat or maintain operation of health facilities in urgent cases so as to avoid causing harm to the life and health of people; packages for procurement of drugs, chemicals, test equipment, medical devices, spare parts, accessories used in giving emergency aid to patients as prescribed in the Law on Medical Examination and Treatment in case health facilities lack such drugs, chemicals, test equipment, medical devices, spare parts, accessories; packages for procurement of drugs or medical devices which can be manufactured by the only one manufacturer in the market;

(2) Packages for copyrighted broadcast programs; packages for transport of national reserves for relief and aid purposes, which must be delivered immediately;

(3) Consulting service packages for preparation of construction plannings which are designated to the authors of construction planning schemes or initiatives that has been successful in the construction planning competition;

(4) Packages for which there is only one bidder capable of performing the contract in the market due to specific technological solution requirements;

(5) Packages of nationally important projects eligible for direct contracting according to the National Assembly's resolutions issued when deciding investment guidelines;

(6) Packages for leasing of warehouse facilities for impounded goods; packages for hiring of transport and handling services for impounded goods at seaports and concentrated inspection places in case there is only one entity providing such services in the port; packages for import of sporting weapons to serve training activities and annual sports competitions of sports training centers, schools and clubs;

(7) Packages of procurement cost estimates whose price ranges from VND 50 million to VND 100 million; packages of investment projects of state-owned enterprises or wholly state-owned enterprises and investment projects defined in the Law on public investment, including: consulting service packages whose price does not exceed VND 500 million, and packages for non-consulting services, procurement of goods, construction, or mixed packages whose price does not exceed VND 01 billion.



06

What case does the shopping apply?

The shopping method applies to the following packages whose price does **not exceed VND 05 billion**:

- Common and uncomplicated non-consulting service packages;
- Packages for procurement of normal goods which are available on the market, have standardized technical properties and equivalent quality;
- Simple construction packages for which approved building drawing designs are available;
- Mixed package providing procurement and construction (PC), of which the construction task is simple construction and is approved building drawing designs.



Compared to the 2013 Law

Compared to the 2013 Law, the Law on Public Procurement 2023 has added a case of shopping as a "mixed bidding package for goods supply and construction, in which the construction task and installation are simple and have design-approved construction drawings."

07

What is the direct procurement?

Direct procurement applies to packages for purchase of similar goods of projects or procurement cost estimates of the same employer or another employer provided that the following requirements must be satisfied.

- Conditions on the contractor: the contractor has won the bid through competitive bidding or limited bidding and has signed a contract for executing a previous package;
- Conditions on quantity and volume applicable: the employer may only make one direct procurement of goods for the current package of which the quantity of each procurement item must be smaller than 130% of that of the corresponding procurement item of the previous package, excluding quantities of additional purchase (if any);
- Conditions on unit price: Unit prices of component tasks of the package applying the direct procurement do not exceed those of corresponding tasks of the previous package and must be also conformable with the market price at the time of contract completion;
- Conditions of time: The previous contract has been signed no more than 12 months before the date of approval of the direct procurement result.

Note: If the previous contractor is no longer capable of executing the direct procurement contract, another contractor who satisfies all capacity, experience, technology and price requirements laid down in the bidding documents and according to the previous contractor selection result may be awarded the contract.

When is **self-execution** applied?

- ➔ Self-execution is the form of an investor that directly manages and uses goods/services of a package of a project or procurement cost estimate. The investor executes that package if it meets all of the following requirements:
 - Functions, tasks, operating fields or business lines of the employer are conformable with requirements of the package;
 - The employer meets technical and financial capacity and experience requirements of the package;
 - The employer has adopted a feasible plan to mobilize personnel, machinery and equipment to meet the package execution schedule.
- ➔ **Contractors executing contract packages:**
The employer may directly execute the package or assigns its financially dependent entity, department or division to do so.

Note:

The above-mentioned entity is not allowed to transfer a volume of tasks worth either at least 10% or more than VND 50 billion of the value of tasks specified in the written assignment of tasks.

What is the form of **community participation**?

Residential communities, teams or groups of adequate skilled workers in the local area where a package of a national target program or public investment program that is executed by both the State and the people is to be executed shall be assigned to take charge of the entire or part of that package provided its price does not exceed VND 05 billion.

What is the form of **price negotiation**?

Price negotiation applies to the following packages:

- Purchase of original brand-name drugs or reference biologicals;
- Purchase of drugs, medical devices or test equipment of a type which can only be manufactured by 01 or 02 manufacturers.

Where does the form of contractor selection apply in **special circumstances**?



Contractor selection in special circumstances shall apply to the following packages which cannot be executed adopting any of the previous contractor selection methods.



Special cases that apply this form include:

- Packages for procurement of drugs or vaccines under trials that can only be purchased under their manufacturers' specific purchase, payment, guarantee, security requirements and other conditions imposed during the contract execution;
- Packages for procurement of drugs, vaccines and medical devices through international organizations;
- Packages with strict national defense and security, external affairs, border and territorial security requirements;
- Selection of lawyers or solicitors providing legal services for protection of legitimate rights and interests of the State of Vietnam and regulatory authorities at foreign or international jurisdictional bodies;

- Packages for direct provision of intensive training for regulatory authorities and public sector entities by foreign training institutions in foreign countries; purchase of plane tickets for domestic and international delegations; packages for provision of professional training courses in specific areas for officials which need the participation of authorities or units that are competent or in charge of performing professional training tasks assigned by competent authorities;
- Packages for performance of political tasks assigned by the Communist Party or the State of Vietnam, including: dissemination of information on printed newspapers, online newspapers, radio and television stations, and other means of mass media in case such information dissemination activities are performed under contracts signed directly by the authorities or units that are granted information dissemination funding with these organizations; organization of special art programs; cooperation in film production;

- Packages for design, construction and installation of stages used in production of broadcasting programs; leasing of spaces for production or recording of highly artistic programs;
- Packages for provision of printing services, stamps, receipts and seals in accordance with regulations of laws on tax administration and customs; packages for purchase of police dogs, police dog training, purchase of drugs, explosives, drug or explosive scent pads used in police dog training;
- Other projects or packages requiring specific requirements regarding contractor selection criteria and procedures, and contract signing and execution, the Government shall request the Standing Committee of National Assembly to decide the selection of a contractor for this project or package as a special circumstance.



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