



Direct Contracting for Construction Packages in Vietnam's Public Procurement Law: Legal Issues and Practice in Ho Chi Minh City

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ABSTRACT: Direct contracting for construction packages is a lawful but sensitive method of contractor selection because it reduces the competitive pressure normally expected in public procurement while promising faster implementation in urgent or technically demanding circumstances. This article analyzes Vietnam's current legal framework on direct contracting for construction packages and examines its implementation practice in Ho Chi Minh City. The study is based on doctrinal legal analysis, documentary analysis, case-based observation of public infrastructure procurement, and comparative references to selected international standards on non-competitive procurement. The findings show that direct contracting remains necessary for urgent works, emergency public investment projects, technically specific packages, and major infrastructure projects requiring accelerated implementation. However, the principal problem is not the formal absence of legal rules, but the broad and partly indeterminate grounds for application, especially those related to urgency, acceleration of progress, quality assurance, and efficiency. In Ho Chi Minh City, where public investment pressure is high and many projects face delays, direct contracting can shorten one procedural stage, but it cannot resolve non-procurement bottlenecks such as site clearance, material supply, design changes, or weak contract management. The article argues that the appropriate reform orientation is not to mechanically expand or restrict direct contracting, but to strengthen legal control over its use through stricter justification, substantive appraisal, contractor-capacity verification, price benchmarking, broader disclosure, post-award supervision, and clearer accountability of competent authorities.

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I. INTRODUCTION

Public procurement law performs a dual function in modern public governance. It enables the State to purchase works, goods, and services required for public purposes, while also protecting competition, transparency, public financial discipline, and accountability. In construction procurement, this dual function is particularly important because construction packages frequently involve large public expenditure, complex technical requirements, long implementation periods, and direct impacts on public safety, urban infrastructure, and service delivery. A defective procurement decision may therefore produce consequences extending beyond administrative irregularity; it may affect project quality, public-investment efficiency, and public confidence in the integrity of state management.

Within this framework, direct contracting, known in Vietnamese procurement practice as *chi dinh thau*, occupies a special legal position. It is not designed to replace open bidding or other competitive procedures. Rather, it is an exceptional method that may be used only when the legal conditions justify a reduction of competitive pressure. In construction, this exception may be necessary where time is genuinely critical, where urgent works must be implemented to protect public interests, or where a package has technical or continuity characteristics that make ordinary competition impracticable or inefficient. Nevertheless, the exceptional nature of direct contracting also means that it is structurally exposed to risks of discretion, favoritism, weak price pressure, and limited external scrutiny.

Vietnam's public procurement framework has changed substantially since the adoption of the Law on Bidding 2023 and subsequent amendments related to bidding and public investment. Decree No. 214/2025/ND-CP further details contractor selection and has become a central instrument for interpreting the grounds and procedure for direct contracting. In particular, Article 78 of this decree is significant because it recognizes cases linked to urgent public investment projects and other situations intended to accelerate progress, ensure quality, and improve efficiency. These rules respond to real governance needs, but they also create legal questions where the boundaries of urgency, accelerated progress, quality assurance, and efficiency are not always defined by measurable criteria.

Ho Chi Minh City is an appropriate setting for examining these questions. The city has a large portfolio of transport, drainage, embankment, urban railway, and other public infrastructure projects. At the same time, it faces strong pressure to disburse public investment capital, improve infrastructure connectivity, and handle urgent technical problems in a rapidly urbanizing environment. In such a context, direct contracting may appear attractive because it can shorten the contractor-selection stage and support faster commencement of works. However, project delays in a major city rarely arise from procurement procedure alone. They may also result from site clearance, land compensation, design adjustment, availability of construction materials, inter-agency coordination, or weak contract implementation. Therefore, the legal issue is not whether direct contracting is useful, but whether its use is justified by the correct legal grounds and whether sufficient safeguards exist to prevent an exceptional mechanism from becoming a convenient managerial shortcut.

This article aims to analyze the legal framework governing direct contracting for construction packages in Vietnam and to evaluate its implementation implications in Ho Chi Minh City. The article addresses three questions. First, what is the legal nature of direct contracting for construction packages under Vietnam's current procurement law? Second, what risks arise from the existing legal grounds and implementation practice in a high-pressure public investment context? Third, what legal and institutional solutions are necessary to ensure that direct contracting is applied only in appropriate cases and under effective control? By answering these questions, the article contributes to the discussion on how to reconcile flexibility in public investment management with the core procurement principles of transparency, competition, efficiency, and accountability.

II. MATERIALS AND METHODS

2.1. Research materials

The study uses three main groups of research materials. The first group consists of Vietnamese legal documents governing bidding, public investment, and contractor selection, especially the Law on Bidding 2023, relevant amending laws, Decree No. 214/2025/ND-CP, and guiding instruments issued by the Ministry of Finance on publication of procurement information, standard documents, appraisal, inspection, and reporting. These materials provide the legal basis for identifying the scope, conditions, procedures, and control mechanisms applicable to direct contracting for construction packages.

The second group consists of public information and documentary evidence relating to the implementation of public investment and infrastructure projects in Ho Chi Minh City. These include public reports on investment disbursement, infrastructure projects, urban railway projects, and the use of direct contracting in urgent or accelerated circumstances. These materials are not treated as a complete statistical database of all direct contracting packages in the city, but as evidence for identifying implementation patterns, practical pressures, and legal-control issues arising in a major urban setting.

The third group includes comparative and international procurement materials. References are made to the European Union's rules on negotiated procedure without prior publication, the United States approach to unusual and compelling urgency, Australia's limited tendering framework, and general principles in UNCITRAL, OECD, and World Bank procurement instruments. These materials are used not to transplant foreign law mechanically into Vietnam, but to extract comparative safeguards relevant to non-competitive procurement, especially strict interpretation of urgency, written justification, transparency, price reasonableness, and post-award review.

2.2. Research methods

The article uses doctrinal legal analysis as the primary method. Legal provisions are read, classified, interpreted, and evaluated in terms of their wording, structure, legal purpose, and relationship with the principles of public procurement. This method is necessary because the key issue of direct contracting lies not only in administrative practice but also in the design of legal grounds and safeguards. Concepts such as urgency, public investment emergency, accelerated progress, quality assurance, and efficiency must be interpreted consistently with the exceptional nature of direct contracting.

Documentary analysis is also used to examine public information on Ho Chi Minh City. The article identifies how direct contracting is justified in relation to urgent works, major infrastructure projects, technical continuity, and schedule pressure. This method helps clarify the relationship between legal provisions and implementation conditions in practice. In addition, comparative legal analysis is used to identify how selected jurisdictions and international instruments control non-competitive procurement through restrictive grounds, written justification, documentation of harm caused by delay, and ex post transparency. Finally, logical and synthetic methods are used to connect legal analysis, practical observations, and policy recommendations into a coherent reform orientation.

2.3. Analytical framework

The article evaluates direct contracting through four connected dimensions. The first dimension is the legality of the ground for application: whether the package falls within a legally recognized case and whether the factual justification is sufficiently specific. The second dimension is the substantive capacity of the selected contractor: whether the proposed contractor has the personnel, equipment, financial capacity, experience, and technical solution required for the works. The third dimension is value for money: whether the package price, negotiation process, and contract price are reasonable in comparison with market conditions and similar procurement data. The fourth dimension is accountability: whether the decision, justification, implementation results, and post-award changes can be reviewed by competent agencies and the public. This framework allows the article to treat direct contracting not merely as a procedural exception but as a governance mechanism that must be controlled throughout the procurement and contract cycle.

III. RESEARCH FINDINGS

3.1. Legal position of direct contracting as an exceptional procurement method

Vietnamese procurement law recognizes direct contracting as one of the lawful methods of contractor selection. This recognition is consistent with comparative procurement systems, which generally accept that a fully competitive procedure may not be possible in every circumstance. Emergency works, technical exclusivity, continuity requirements, national security, or other exceptional circumstances may justify a limited or non-competitive procedure. However, the legality of such a method depends on strict compliance with the conditions established by law. The existence of a legal basis for direct contracting does not mean that contracting authorities have a broad managerial choice to use it whenever it appears convenient.

For construction packages, this distinction is particularly important. A construction contractor does not merely deliver a standardized product; it organizes labor, equipment, materials, site management, safety measures, subcontracting, quality control, and progress management. Therefore, reduced competition at the selection stage increases the need for stronger controls over the factual basis for selection, the contractor's capacity, the reasonableness of price, and the monitoring of contract implementation. Direct contracting can be lawful and necessary, but it must remain an exception within a system whose normal logic is competition.

The current Vietnamese framework reflects an effort to balance flexibility and control. The legal rules allow direct contracting in defined cases, while guiding documents increasingly require publication of information, standardized dossiers, appraisal reports, and reporting on procurement implementation. This combination shows that the State does not simply liberalize direct contracting; it attempts to embed it within a documented and reviewable process. Nevertheless, the effectiveness of this approach depends on how clearly legal grounds are defined and how seriously appraisal, disclosure, price negotiation, and post-award supervision are carried out in practice.

3.2. Broad legal grounds and risk of discretionary expansion

The central legal problem identified in this study is the breadth of several grounds for applying direct contracting. Terms such as urgent, pressing, accelerated progress, quality assurance, and efficiency are meaningful policy concepts, but they are not self-executing legal standards unless supported by objective indicators, documentary evidence, and a clear causal link between the chosen procurement method and the expected public benefit. If these terms are interpreted too broadly, ordinary administrative delay may be converted into legal urgency, and managerial preference may be presented as a necessity.

The risk is particularly visible in construction procurement. A project may be delayed because of site clearance, compensation, design modification, shortage of materials, price fluctuation, inter-agency coordination, or lack of implementation capacity. Direct contracting can shorten contractor selection, but it cannot solve all these causes. Therefore, a decision to use direct contracting should demonstrate that the procurement procedure itself is the decisive bottleneck and that using a competitive procedure would cause a concrete harm to public interest, project safety, or a legally relevant schedule. Without this demonstration, direct contracting may be used to treat symptoms rather than causes.

Decentralization further increases the need for precise legal control. Decentralization allows local authorities and project owners to respond more quickly to local circumstances, but it also creates the possibility of uneven interpretation among agencies. If the law gives broad concepts without adequate justification templates, risk indicators, and independent appraisal, different contracting authorities may apply direct contracting in inconsistent ways. In a city with a large volume of public works, even a small interpretive expansion can have a substantial effect on competition and public investment discipline.

3.3. Implementation practice in Ho Chi Minh City

Ho Chi Minh City illustrates both the usefulness and the limits of direct contracting. The city must simultaneously address urgent infrastructure maintenance, flood control, embankment protection, transport congestion, urban railway implementation, and large-scale public investment disbursement. In this environment, some construction or infrastructure-related packages may legitimately require rapid contractor selection. For example, works responding to landslides, subsidence, damaged embankments, or urgent public safety risks may satisfy the rationale of exceptional procurement because delay could directly threaten public interests.

At the same time, Ho Chi Minh City's infrastructure context also reveals why direct contracting should not be treated as a universal acceleration tool. Many large projects are delayed not only because of contractor selection but also because of site clearance, land procedures, design adjustment, funding allocation, material supply, or coordination among agencies. If these factors remain unresolved, direct contracting may create only an apparent acceleration at the beginning of the process while delays reappear during contract performance. This is why the legal justification should not stop at a general reference to project importance or schedule pressure. It should explain why direct contracting is necessary for the specific package at the specific moment.

The case of technically complex infrastructure, including urban railway projects, further shows the need for careful distinction. Some packages may require technical continuity, specialized expertise, or coordination with previous design and technology decisions. These factors can support a limited form of competition or direct contracting when properly evidenced. However, technical complexity alone should not automatically remove competition. The selected contractor or consultant must still be assessed against objective criteria, including comparable experience, key personnel, technical solution, ability to mobilize resources, and capacity to meet safety and quality requirements.

3.4. Procedure, appraisal, and contractor-capacity assessment

A common misunderstanding is to view direct contracting as a procedure that eliminates the need for careful evaluation. Under the current legal framework, direct contracting may reduce competitive comparison, but it does not remove the requirements of legality, documentation, appraisal, negotiation, approval, and information disclosure. The file for a direct contracting package should be capable of showing why the method is legally available, why the selected contractor is appropriate, why the price is reasonable, and how the contract will be monitored. In other words, the reduction of competition must be offset by a stronger documentary and accountability burden.

In construction packages, contractor-capacity assessment is the most important substantive control. Formal experience and legal eligibility are insufficient. The appraisal should examine whether the contractor can actually perform the works under the conditions of the specific project. This includes assessment of key personnel, equipment availability, site organization plan, construction methods, occupational safety measures, quality-control system, financial capacity, subcontractor management, and past performance. Where a contractor has a history of delay, poor-quality works, contractual disputes, or administrative sanctions, this history should be considered as a risk factor before approval.

The practical risk is that appraisal may become a formality when schedule pressure is high. If the project owner has already decided on the contractor and the appraisal body merely checks whether the dossier is complete, the legal process may appear compliant while the substantive safeguard is weak. For high-value or technically complex packages, a stronger mechanism of independent technical review, price review, or risk-based appraisal should be introduced. This would help prevent the appraisal process from becoming a mechanism for validating decisions already made.

3.5. Price control, disclosure, and post-award supervision

Price control is another sensitive issue in direct contracting. In an open bidding procedure, competition may place downward pressure on prices and reveal market information. In direct contracting, price reasonableness depends heavily on the quality of cost estimates, negotiation, benchmarking, and professional appraisal. A nominal saving rate may not be sufficient if the original package price is inflated, the scope is later changed, or contract variations reduce the initial price advantage. Therefore, value for money should be assessed throughout the contract cycle rather than only at the moment of approval.

Vietnam's recent guidance indicates that procurement efficiency cannot be assessed mechanically through a single saving ratio. This is correct in principle because construction procurement involves differences in technical scope, contract conditions, risk allocation, and market context. However, the absence of a rigid saving ratio should not mean weak price control. For direct contracting, the contracting authority should be required to document the basis for the package price, compare it with market data and similar contracts, record negotiation results, and explain any difference between estimated price, proposed price, and contract price.

Disclosure and post-award supervision are especially important because direct contracting limits *ex ante* competition. Public disclosure should include not only the contract award result but also sufficient information on the legal ground, the selected contractor, the price, and the implementation status, subject to legitimate confidentiality limits. Post-award supervision should examine contract performance, variations, advance payments, quality acceptance, subcontracting, delays, and final settlement. In many cases, the greatest risks of waste or weak accountability occur not in the award decision itself but during implementation, when quantities, deadlines, and payment conditions may change.

Table 1. Main legal grounds, implementation risks, and recommended controls for direct contracting of construction packages

Legal ground or justification	Main risk in practice	Recommended control
Urgent or pressing public works	Ordinary delay may be framed as legal urgency.	Require evidence of the event, risk level, timeline, and consequences of not using direct contracting.
Accelerated project progress	Direct contracting may be used although delay comes from site clearance, design changes, or materials.	Require a causal explanation showing why the procurement method is the decisive bottleneck.
Quality or technical specificity	Contractor familiarity may replace substantive capacity assessment.	Verify key personnel, equipment, method statement, safety, quality control, and comparable experience.
Efficiency and value for money	Nominal price saving may conceal weak estimates or later variations.	Benchmark prices, verify quantities, document negotiation, and audit contract variations.
Decentralized approval	Inconsistent interpretation across project owners and agencies.	Use standardized justification notes, risk indicators, and independent appraisal for high-risk packages.

Source: Developed by the author from the analysis of Vietnam's current procurement framework and implementation risks.

IV. DISCUSSION

The findings indicate that direct contracting for construction packages should be understood as a risk-management problem rather than a simple choice between speed and competition. Speed is a legitimate public-management value, particularly when a construction package is connected with public safety, urgent infrastructure recovery, or strategic urban development. However, speed becomes problematic if it weakens the evidentiary basis of the decision, reduces substantive contractor assessment, or makes price control less transparent. The reform objective is therefore to preserve necessary flexibility while preventing the exception from becoming a routine practice.

First, the legal ground for direct contracting should be tightened through a mandatory written justification. This justification should identify the exact legal provision, the factual circumstances, the public interest affected, the expected harm if a competitive procedure is used, and the reason why direct contracting is proportionate. For urgent or pressing cases, the file should include evidence of the event creating urgency, the timeline, the risk to safety or public service, and the connection between delay and harm. For accelerated-progress cases, the file should distinguish procurement delay from other causes of project delay such as site clearance, design changes, or material shortages.

Second, appraisal should be upgraded from dossier completeness review to substantive legal, technical, and financial scrutiny. The appraisal body should examine not only whether documents exist, but also whether the justification is convincing, whether the selected contractor is genuinely capable, and whether the price is reasonable. For high-value, technically complex, or politically sensitive packages, risk-based independent review should be required before approval. This would increase the credibility of direct contracting decisions and reduce the risk that appraisal merely validates preselected outcomes.

Third, contractor-capacity assessment should be made more evidence-based. The selected contractor should demonstrate actual capacity to implement the works, including personnel, equipment, construction organization, financial resources, safety management, quality control, and past performance. Public procurement databases should be used to identify contractors with repeated delays, contract violations, or poor implementation records. This approach would help prevent direct contracting from rewarding firms with weak performance histories simply because they are familiar to the project owner.

Fourth, price control should combine market benchmarking, cost verification, and post-award monitoring. The contracting authority should compare the proposed price with market data, similar packages, technical quantities, and independent cost estimates. Negotiation minutes should explain how the final price was formed and why it is efficient. During implementation, changes in scope, quantities, schedule, and payment should be monitored because initial price saving can be neutralized by later variations. A procurement method that saves time at award but produces waste during implementation cannot be considered efficient.

Fifth, transparency should be strengthened in a manner appropriate to the risk profile of direct contracting. Since direct contracting reduces competitive visibility before award, disclosure after decision becomes more important. Public information should cover the ground for application, the selected contractor, the contract price, implementation progress, and any major adjustment. This does not require disclosure of legitimately confidential technical or commercial information, but it does require

enough information for oversight bodies, professional communities, and the public to evaluate whether the exceptional procedure was justified.

Sixth, post-award supervision should be institutionalized as a core safeguard. Many procurement risks emerge during contract implementation rather than at the formal award stage. In construction packages, these risks include slow mobilization, subcontracting without adequate control, variation orders, low-quality works, delayed acceptance, and inflated settlement. Ho Chi Minh City should classify directly contracted construction packages by risk level and select high-risk packages for targeted inspection, audit, or technical review. This would shift the control model from purely ex ante paperwork to continuous accountability throughout the project cycle.

Seventh, digital data should be used to support prevention rather than only reporting. Data on contractor history, bid prices, contract prices, implementation progress, delays, violations, inspection findings, and audit results should be connected and used during appraisal. A data-driven approach can help authorities identify abnormal price patterns, repeated use of the same contractor, low saving combined with later variations, or project owners with unusually high reliance on direct contracting. Such indicators would not automatically prove illegality, but they would help prioritize oversight resources.

Comparative procurement experience supports these recommendations. The European Union, the United States, Australia, UNCITRAL, OECD, and World Bank frameworks all accept some form of limited or non-competitive procurement, but they generally surround it with strict conditions, written justification, transparency, and review. Vietnam can adapt these safeguards without abandoning its own legal and administrative context. The key lesson is that non-competitive procurement is not problematic merely because it is non-competitive; it becomes problematic when the exception is not narrowly justified, not documented, not priced carefully, and not reviewed effectively.

Table 2. Comparative safeguards for non-competitive procurement and implications for Vietnam

Jurisdiction or model	Relevant safeguard	Implication for Vietnam
European Union	Negotiated procedure without prior publication is interpreted restrictively and linked to specific legal conditions.	Urgency should be evidenced and applied narrowly rather than inferred from general project importance.
United States	Unusual and compelling urgency may justify limited competition when delay would seriously harm public interest.	The procurement file should show the harm caused by delay and why ordinary competition is impracticable.
Australia	Limited tendering is permitted for extreme urgency caused by unforeseen events and subject to documentation.	Direct contracting should be tied to specific facts, not general administrative pressure.
UNCITRAL/OECD/World Bank principles	Transparency, objective criteria, integrity controls, and review mechanisms compensate for reduced competition.	Disclosure, appraisal, and post-award audit should be strengthened for directly contracted packages.

Source: Synthesized by the author from comparative procurement principles and international procurement guidance.

V. CONCLUSION

Direct contracting for construction packages is a necessary but exceptional mechanism in Vietnam's public procurement law. It has practical value where public works are urgent, technically specific, or closely linked to major infrastructure schedules. In Ho Chi Minh City, this mechanism can support faster responses to certain infrastructure and public-investment needs. However, the city's experience also confirms that direct contracting cannot be treated as a general solution to project delay. Many delays arise from non-procurement causes, and using direct contracting without addressing those causes may only shift risks to the implementation stage.

The study shows that the main challenge is not the lack of legal rules, but the quality of interpretation and enforcement. Broad legal concepts such as urgency, accelerated progress, quality assurance, and efficiency must be operationalized through evidence, criteria, and accountability. A valid direct contracting decision should answer four questions: whether the legal ground is truly satisfied, whether the selected contractor is substantively capable, whether the price is reasonable, and whether the decision and implementation can be reviewed. If any of these elements is weak, the exception may undermine transparency, competition, and public investment efficiency.

The appropriate reform orientation is therefore to control direct contracting more rigorously rather than to expand or restrict it mechanically. Legal reform should clarify the criteria for urgent and pressing cases, narrow overly open-ended grounds, and require stronger explanation by competent authorities. Implementation reform should improve appraisal quality, strengthen contractor-

capacity assessment, benchmark prices, disclose information, and conduct risk-based post-award supervision. Through these measures, direct contracting can be maintained as a lawful instrument for special circumstances while remaining compatible with transparency, reasonable competition, value for money, and protection of the public interest.

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