Public Procurement and competition policy in Korea

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Public Procurement system in Korea

◆ Institutional framework

- **Public Procurement Service (PPS)**
  - A central government organization responsible for management and development of procurement procedures for government agencies
  
  * In 2010, PPS accounted for 36.2% of the total amount of public procurement in Korea
- **Other public entities** may procure goods or services for themselves.

<table>
<thead>
<tr>
<th>Size of a procurement project</th>
<th>Goods ≥ ₩100M</th>
<th>Construction work ≥ ₩3B</th>
<th>other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central government agencies</td>
<td>PPS has exclusive authority</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other public entities</td>
<td></td>
<td></td>
<td>Have autonomy But may request PPS</td>
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</tbody>
</table>
Public Procurement system in Korea

◆ Procedures

- Frustrated bidders can appeal to the PPS or courts against final bid decisions or procedural irregularities, if any.
Public Procurement system in Korea

◆ Brief history of PP system in Korea

**Introduction Period (1951 ~ 61)**
- Open public tender principle
- Lowest price rule

**Transition Period (1962 ~ 83)**
- Limited public tender
- Adjusted average price rule

**Current (1984 ~ )**
- Pre-Qualification system
- Lowest price above threshold rule

Problems:
- Dumping bids
- Collusions
- Problems on quality control

Problems:
- Corruption
- Collusions among bidders

Problems:
- Cooperation among entities
- Measures on bid-rigging
- Introduce e-procurement system
Public Procurement system in Korea

- Transparency, Efficiency and Competition

**Enhance transparency**

- Higher value for money and procedural efficiency
  - However sometimes:...

  - Limited number of participants induces collusions
  - Increased gov't involvement invites corruption

**Limit transparency**

- Improve reliability and invite participants
  - However sometimes:...
  - Procedural transparency hurts economic efficiency
  - Transparency among participants invites collusions
Prevention and law enforcement against Bid-riggings

◆ Measures to Prevent Bid-riggings

• **Electronic bidding system** (2001, PPS)
  - Public announcement and participation of public biddings are all conducted on-line: enhance transparency and save costs

• **Include prearranged damage clause in the contract** (2010, KFTC)
  - KFTC suggests procuring public entities to include clauses specifying a damage amount it will claim in case the bidder involves in a bid-rigging
  * e.g. 10% of the contract amount

• **Disqualification of a bid-rigger** (2009, KFTC)
  - It is mandatory for KFTC to notify PPS of any habitual bid-riggers in public tenders, and PPS may disqualify such a recidivist for future Public tenders during a certain period of time

• Operates **education sessions** for bidders to prevent bid-rigging
Prevention and law enforcement against Bid-riggings

◆ Measures to Prevent Bid-riggings

• **Bid Rigging Indicator Analysis System (BRIAS)** (2006, KFTC)
  - carries out **statistical analysis of bidding information** on public procurements electronically transmitted from public organizations which operate procurement procedures

  * bid-winning possibility, number of bidders, bid prices etc

  - a total of **322 public organization** are required to notify the KFTC of information of their tender process

  - it helps the KFTC better **detect bid-rigging conspiracies** and has **deterrence effect** by sending a signal that the KFTC is monitoring them

  however, KFTC still need to prove ‘**agreements among bidders**’ and ‘**anticompetitive effects**’ in order to prosecute a bid-rigging
# Prevention and law enforcement against Bid-rigging

## Legal Framework

<table>
<thead>
<tr>
<th>Target Behavior</th>
<th>Criminal code</th>
<th>Act on Contracts to which the state is a party</th>
<th>Construction Business Act</th>
<th>Monopoly Regulation and Fair Trade Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obstruction of bidding process</td>
<td>Obstruction of public procurement</td>
<td>Collusion in construction tender</td>
<td>Agreement, collusion</td>
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<td>Obstruction of public procurement</td>
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<td>Goods, Services</td>
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<tr>
<td>Imprisonment fine</td>
<td>Disqualification for 2 yrs</td>
<td>Imprisonment fine</td>
<td>Corrective Order Surcharge</td>
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<tr>
<td>Enforcement agency</td>
<td>Prosecutor’s office</td>
<td>PPS</td>
<td>Prosecutor’s office</td>
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Prevention and law enforcement against Bid-riggings

◆ Law enforcement by the KFTC

- competition law articulates that bid-rigging falls under cartel

MRFTA §19 No enterpriser shall agree to engage in one of the following acts which unfairly restrict competition decisions of the following matters in bidding processes bidders, bidding prices, the successful bidder, the successful bidding price, the proportion of successful bids in a bidding, the method of design or construction*, other matters affects competition in a bidding process

* added in order to address bid-riggings in Turn-Key projects

- leniency program* is applicable to bid-rigging cases
  * the 1st leniency applicant can get full immunity and the 2nd applicant can receive 50% reduction of surcharge amount
Prevention and law enforcement against Bid-riggings

◆Bid-rigging in Turn-key project*

*public construction project in which one construction company dealt with both designing and building, also known as ‘Design-Build Project’

- it is introduced to achieve two objectives; saving public budget and building high quality and safe public facilities
- however, this kind of project is vulnerable to a bid-rigging because
  - only small number of large construction companies can participate
  - cartels are possible in both part, design and building

• 4 types of bid-rigging in turn-key projects
  1. bid rotation
  2. complementary bidding
  3. cartel in architecture design
  4. agreement on bidding price
Prevention and law enforcement against Bid-riggings

◆ Bid-rigging in Turn-key project

- **KFTC’s efforts** to prevent and crack down bid-rigging in turn-key projects
  - monitors bidding processes by using **BRIAS**
  - **amended competition law** to include agreements on design or construction in the list of cartel conducts

* a case: Bid-rigging for Seoul Subway line No.7 construction project

(facts) Seoul City government announced tenders for design-build contract on 6 sections of construction work to extend Subway Line No.7 (Dec. 2003)
Six large construction companies agreed to participate in the bidding, allocating each section of work to each of them

(decision by KFTC) imposed corrective order and surcharge of 22.1 million won filed a complaint with the prosecution for criminal charge
Conclusion

◆ Some observations

- For a PP system, a development for transparency and effectiveness can have best results only when it enhances competition among participants

- Cooperation among public procurement agencies and competition agencies is essential to prevent bid-riggings
THANK YOU