

**12th Session of the Intergovernmental Group of Experts on Competition
Law and Policy
Geneva, 9 to 11 July 2012**

**Round Table
Competition Policy and Public Procurement**

**Presentation
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Prepared for
the 12th IGE on Competition Law and Policy



Public Procurement and competition policy in Korea

July 2012

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Public Procurement system in Korea

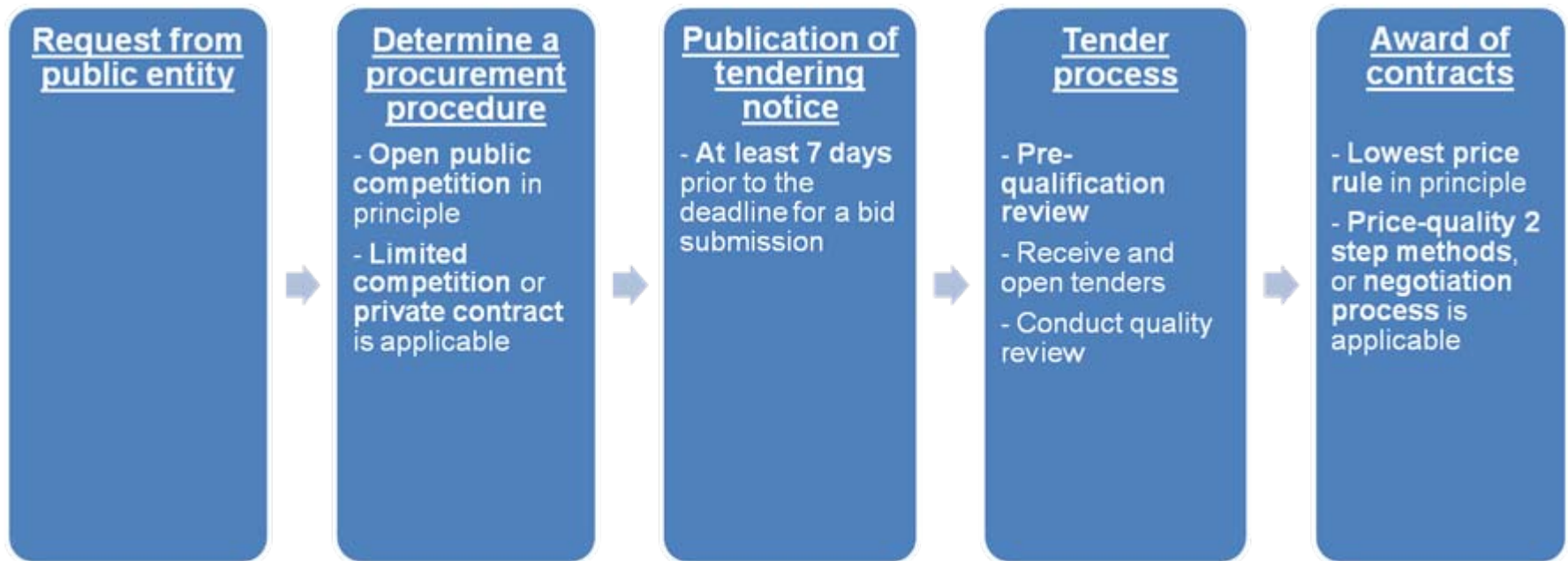
◆ Institutional framework

- **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.

Size of a procurement project	Goods ≥ ₩100M Construction work ≥ ₩3B	other
Central government agencies	PPS has exclusive authority	
Other public entities (local government, SOE etc.)		Have autonomy But may request PPS

Public Procurement system in Korea

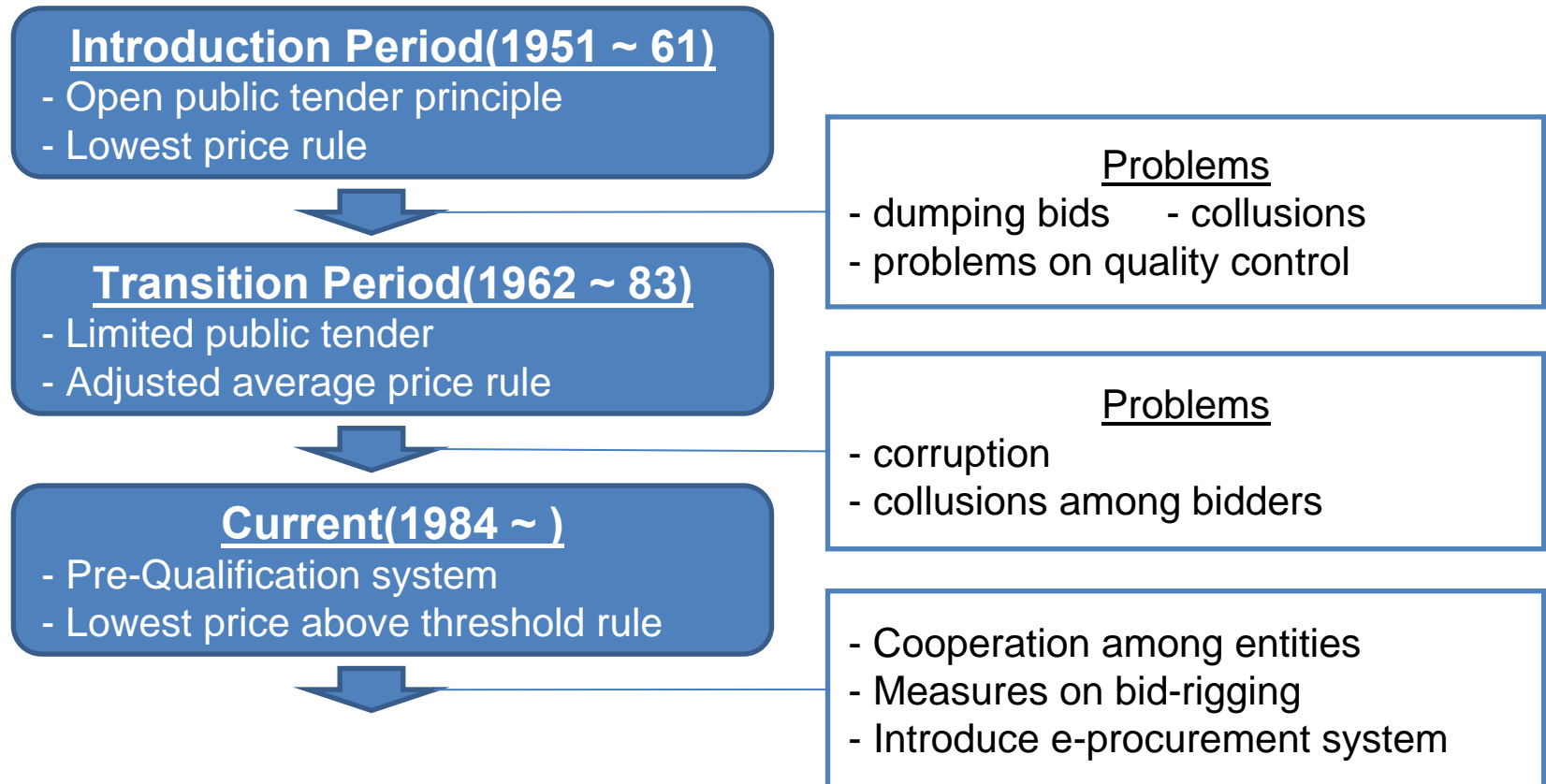
◆ Procedures



- Frustrated bidders can **appeal** to the PPS or courts against final bid decisions or procedural irregularities, if any.

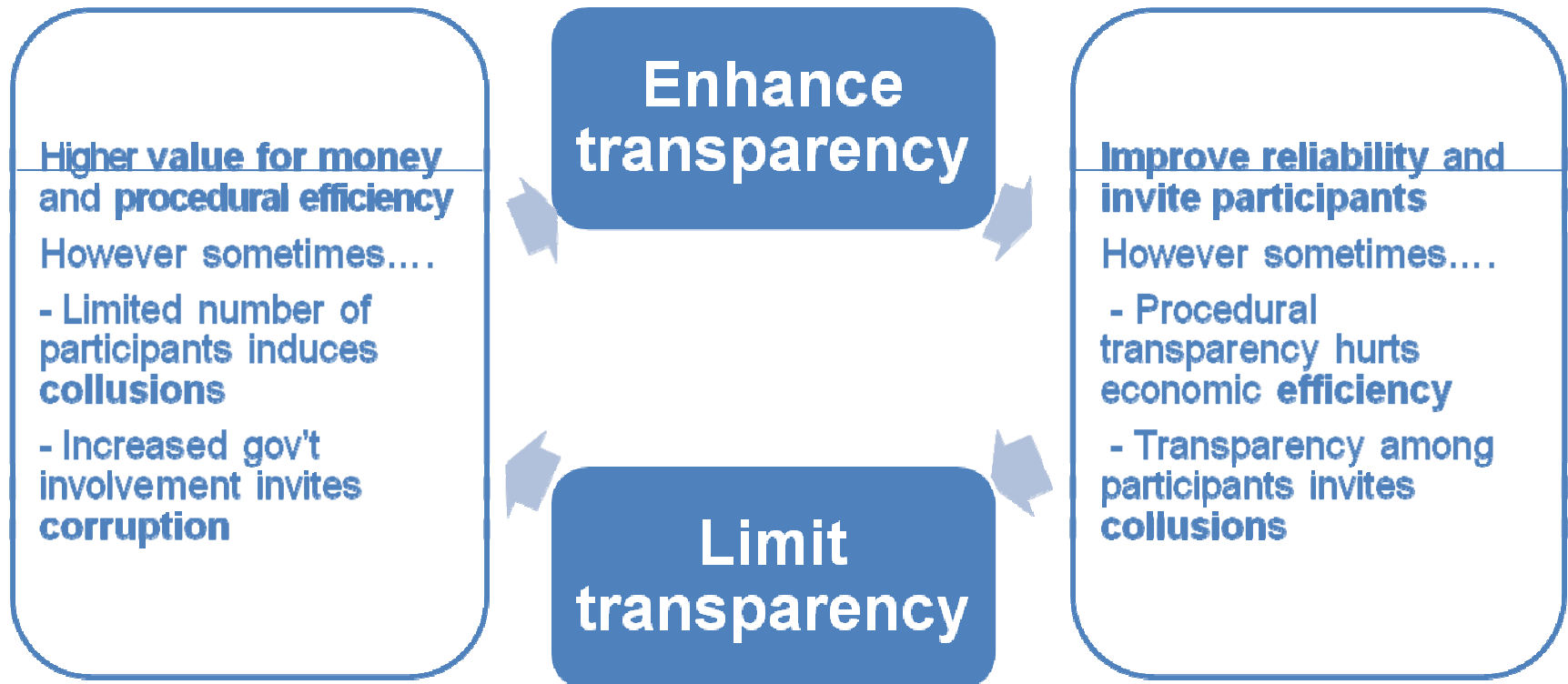
Public Procurement system in Korea

◆ Brief history of PP system in Korea



Public Procurement system in Korea

◆ Transparency, Efficiency and Competition



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-riggings

◆ Legal Framework

	Criminal code	Act on Contracts to which the state is a party	Construction Business Act	Monopoly Regulation and Fair Trade Act
Target Behavior	Obstruction of bidding process	Obstruction of public procurement	Collusion in construction tender	Agreement, collusion
Object of a tender	Goods, Services	Goods, Services	Construction	Goods, Services
Punishment	Imprisonment fine	Disqualification for 2 yrs	Imprisonment fine	Corrective Order Surcharge <i>Imprisonment</i> <i>Fine</i>
Enforcement agency	Prosecutor's office	PPS	Prosecutor's office	Korea Fair Trade Commission

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