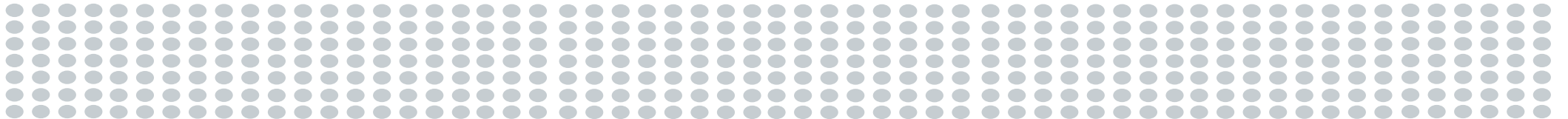


# Public Procurement Law & System in KOREA

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## I . Public Procurement and Economic Development

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# Public Procurement and Economic Development (1)

- ▶ Public Procurement is the basis for building social infrastructure such as roads and dams and is often used as a means of industrial policy such as support for SMEs.
  - Improving the transparency and efficiency of public procurement is an important foundation for economic development.

Contract Statistics		(trillion KRW, %)		
Year		2021	2022	2023
Total Contract Amount (A)		184.1	196.0	208.5 (\$146.6 Billion)
Large/Midsized Companies	Contract amount(B)	65.2	71.1	73.7 (\$51.8 Billion)
	Proportion (B/A)	35.4%	36.2%	35.3%
Small Companies (SMEs)	Contract amount(D)	118.9	124.9	134.8 (\$94.8 Billion)
	Proportion (D/A)	64.6%	63.8%	64.7%

- South Korea executed contracts for procurement of goods (37.5%), services (24.1%), and facility construction (38.4%) worth USD 146.6 billion in 2023
- Among them, SME contracts accounted for 64.7% and large and midsized firms 35.3%.





## Public Procurement and Economic Development (2)

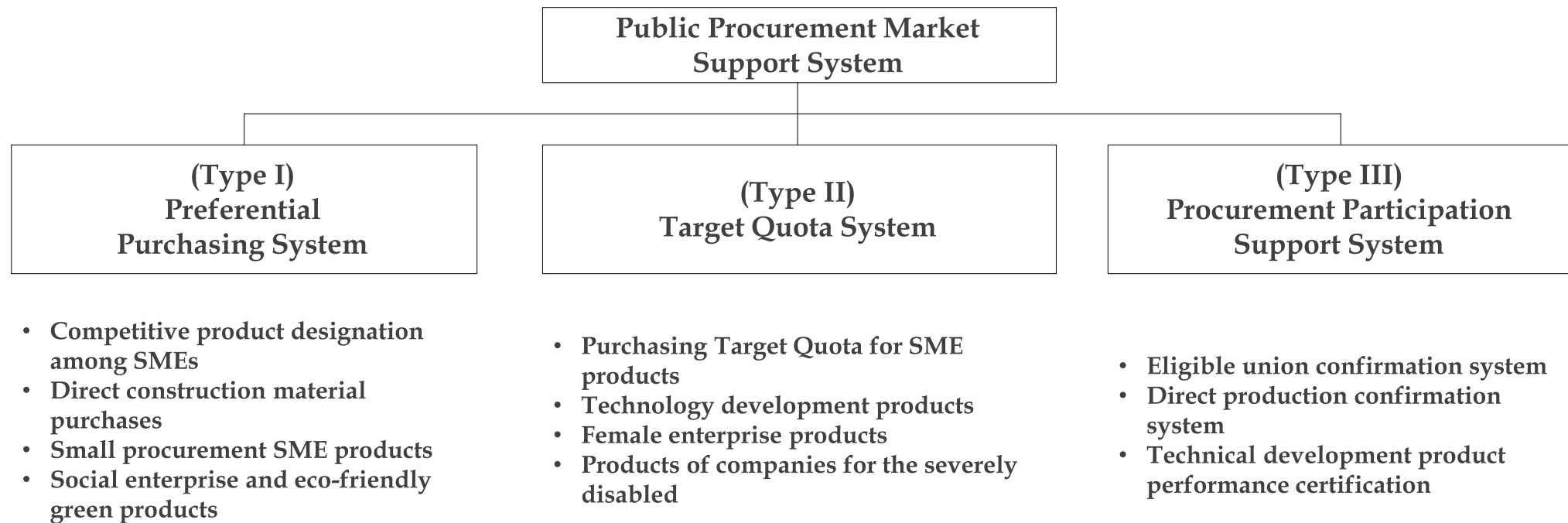
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- ◆ The proportion of legally obligatory purchases in the Korean public procurement system is as follows.
  - Small and midsize businesses: 50% of total purchases
  - Technology development products: 10% of SME purchases
  - Female company products: 5% of goods and services purchases / 3% of facility construction
  - Companies for people with disabilities products: 5% of total purchases
  
- ◆ Government Policy Measures of Korean Public Procurement
  - Reflected in the contract system: Additional points/preferential treatment in bidding, reflected in evaluation points, alleviated competition, preferential price
  - Promotion of specific purchases: Obligatory/priority purchase of technical products, green products, etc.
  - Realization of social value: Priority purchase of products from SMEs, women's companies, and companies for people with disabilities
  - Improvement of consumer fulfillment ability: Reflect the institutional evaluation of purchasing performance, publicize execution results

# Public Procurement and Economic Development (3)

## ◆ South Korea's Public Procurement Market Support System

- Can be classified into the Preferential Purchasing System, Target Quota System, and Procurement Participation Support System, etc. The market support system is recently expanding to various types such as social enterprise products, cooperative products, and eco-friendly green products.





## II . Overview of South Korea's Economic Development History

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# Public Procurement and Economic Development (1)

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- In the 1950s, Korea was supported by the Official Development Assistance (ODA)
- 1962-1979: Official start of the Economic Development Policy of Park Chung-hee's Government
  - Established Economic Planning Board (EPB)
- 1980-1993: President Choi Gyu-ha, President Chun Doo-hwan, President No Tae-Woo Government
  - Officially started Fair Competitiveness Policy
  - Established Fair Trade Commission
- 1994-Present: President Kim Young-Sam and after
  - Official IT training policy
  - Established Ministry of Information and Communication
  - Established Financial Services Commission (After IMF)
- The economic development of Korea is led by the government
- Need to understand Public Procurement in the same context



## Public Procurement and Economic Development (2)

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- Before joining the WTO Government Procurement Agreement of 1995,
  - Budget control is important in government procurement, so it was traditionally handled by the Public Finance Act.
  - This is the reason government procurement was regulated in the “Public Budget Act” and “Local Finance Act”.
- After joining the WTO Government Procurement Agreement of 1995,
  - Independent act was enacted for public procurement.
  - “Act on Contracts to Which the State is a Party” was enacted in 1995 and  
“Act on Contracts to which the Local Government is a Party” was enacted in 2005.



### Ⅲ. Characteristics of Korea's Public Procurement Legislation

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1. Existence of a Centralized Procurement Agency
2. Centrality of Construction Works in Public Procurement
3. Active Utilization of Public Procurement for Socio-Economic Policy Objectives



# 1. Existence of a Centralized Procurement Agency

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- ◆ Korea is strongly focused on centralized procurement. This is because it has the Public Procurement Service of Korea (PPS), a centralized procurement agency that conducts procurement business not only for central government agencies but also for local governments and public enterprises.
- ◆ Under current laws, central government agencies are obliged to use PPS in procurement above a certain threshold and central and local government agencies are obliged to buy through PPS in the Multiple Award Schedule (MAS).
- ◆ In Korea, about 30 percent of the entire public procurement is conducted by the PPS, and the rest is conducted by other agencies, including the Defense Acquisition Program Agency (DAPA).



## 2. Centrality of Construction Works in Public Procurement

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- ◆ It can be said that centralized procurement has been proven to be more beneficial in Korea. This is because Korea has been able to make public procurement more transparent and efficient by establishing an E-Procurement System, mainly led by PPS, and allowing various procuring entities to use it. However, there are also some criticisms about centralized procurement led by PPS, such as the purchase price via PPS and the level of commission paid by procuring entities to PPS.
- ◆ Based on its subject, public procurement is broadly divided into three areas: goods, construction works and services. The WTO Government Procurement Agreement also provides the scope of concession for each country in these three areas. As these three have both commonality (e.g., transparency and efficiency in the process of procurement must be secured) and differences (e.g., defining specifications in advance is easy for goods but relatively difficult for services or complicated construction works), public procurement legislation of each country seeks to regulate public procurement considering these things in balance.





## 2. Centrality of Construction Works in Public Procurement

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- ◆ Although one of the basic laws related to public procurement in Korea, the ‘Act on Contracts in Which the State is a Party,’ regulates all of goods, construction works and services, it has the most provisions related to construction works. For example, Article 17 (Warranty of Contract for Construction Works, Article 18 (Warranty Bond) and Article 19 (Adjustment of Contract Amount According to Price Fluctuation, etc.) are understood to apply only to construction works, and Article 25 (Joint Contract) is also understood to apply mostly to construction contracts.



## 2. Centrality of Construction Works in Public Procurement

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- ◆ In addition to this act, other acts such as the 'Framework Act on the Construction Industry,' the 'Construction Technology Promotion Act' and the 'Engineering Industry Promotion Act' also contain provisions related to public construction works to complement those provisions of the 'Act on Contracts in Which the State is a Party.'
- ◆ In the history of Korea's public procurement legislation, the public procurement system has been improved primarily around construction works. Furthermore, changes in the tender and award system, one of the key elements of public procurement legislation, which include the lowest price award and qualification assessment systems, have been made mainly in construction works. When it comes to public procurement performance, it is found in practice that construction works have a very large share.



### 3. Active Utilization of Public Procurement for Socio-Economic Policy Objectives

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- ◆ Another feature of Korea's public procurement legislation is the active utilization of public procurement for socio-economic policy objectives. For example, Korea has actively implemented a program that makes it mandatory to purchase products from small and medium enterprises (SMEs) in public procurement, and as a result, the share of SME products is very large in public procurement.
- ◆ In addition to this, Korea operates various programs that connect innovation policy, green policy and social policy with public procurement. This can be understood to have been influenced by the 'developmental state' tradition in Korea, where the central government takes a leading role in economic development.



## IV. Overview of Korea's Public Procurement Legislation

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1. The 'Act on Contracts in Which the State is a Party' and the 'Act on Contracts in Which a Local Government is a Party'
2. The 'Act on the Government Procurement Program'
3. The 'Act on Facilitation of Purchase of Small and Medium Enterprise-manufactured Products and Support for Development of Their Markets'
4. The 'Defense Acquisition Program Act'



## 1. The 'Act on Contracts in Which the State is a Party' and the 'Act on Contracts in Which a Local Government is a Party'

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- ◆ As public procurement contracting has been traditionally understood as a financial activity, government contracts have been regulated by the 'Budgets and Accounts Act' and local government contracts have been regulated by the 'Local Finance Act.' As Korea joined the WTO GPA, however, it had to establish standards for international tenders and install a dispute conciliation organization. For this reason, in 1995, it established the 'Act on Contracts in Which the State is a Party,' which regulates government contracts independently.
- ◆ Even after this law was established, local government contracts were still regulated by the 'Local Finance Act.' Even so, most local government contracts were operated according to the 'Act on Contracts in Which the State is a Party' with modifications. This is because local governments were highly dependent on the central government in contracting business.



## 1. The 'Act on Contracts in Which the State is a Party' and the 'Act on Contracts in Which a Local Government is a Party'

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- ◆ For example, most of their contracting services were entrusted to the PPS, which is responsible for central government contracting. As the local autonomy system came to maturity, however, there were growing calls for local governments to conduct their contracting services independently. As a result, the arguments for establishing a law that fully reflected the distinct characteristics of local contracting systems were recognized to be compelling, and finally in 2005, the 'Act on Contracts in Which a Local Government is a Party' was established.
- ◆ The 'Act on Contracts in Which the State is a Party' and the 'Act on Contracts in Which a Local Government is a Party' have various provisions, including contracting principles, contracting methods, tender and award procedures and standards, contract amount adjustment and restrictions on inappropriate business entities. Of them, the provision on principles of contracting provides that "a contract shall be concluded by agreement of parties to the contract on equal footings, and the parties shall perform terms and conditions of the contract in good faith."



## 2. The 'Act on the Government Procurement Program'

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- ◆ In the past, the central procuring agency, PPS, was regulated by the 'Government Procurement Fund Act.' However, with the growth of the scale of procurement projects, the government incorporated procurement funds into the 'Enterprise Budget and Accounts Act' to improve the transparency of public procurement operation and began to regulate the operation and management of public procurement according to the 'Act on the Government Procurement Program,' which was established in 1994. This law prescribes matters on contracting services performed by PPS, including grounds for the Multiple Award Schedule (MAS). The 'Act on the Government Procurement Program' shows the critical role of PPS in Korea's public procurement system.



### 3. The 'Act on Facilitation of Purchase of Small and Medium Enterprise-manufactured Products and Support for Development of Their Markets'

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- ◆ In 2009, the 'Act on Facilitation of Purchase of Small and Medium Enterprise Manufactured Products and Support for Development of Their Markets' was established to promote public procurement of products made by SMEs. This law mandates the establishment of a mandatory SME purchase ratio program to promote the purchase of SME products and regulates the inter-SME competition system. It also prescribes matters on the direct production verification system to ensure the inter-SME competition system is operated effectively as well as mandates a preferential purchase system for technology products developed by SMEs, which is currently utilized as a key tool for innovation procurement.
- ◆ SME-focused procurement policy based on the 'Act on Facilitation of Purchase of Small and Medium Enterprise-manufactured Products and Support for Development of Their Markets' has been evaluated positively for contributing to securing the competitiveness of SMEs. However, it has also been criticized for making SMEs heavily dependent on public procurement, thereby failing to contribute to actual improvement of their competitiveness.





## 4. The 'Defense Acquisition Program Act'

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- ◆ In the past, matters concerning promotion of the defense industry were regulated by the 'Act on Special Measures for Defense Industry,' and matters concerning the acquisition and management of military supplies were regulated separately by the 'Act on the Management of Military Supplies.'
- ◆ Other matters concerning requirement decisions, research and development, and import and finance operations, which are the starting points and most important indicator of defense acquisition, were regulated by the 'Defense Acquisition Management Regulation,' a Ministry of National Defense instruction. However, it has been pointed out that this legal system obstructed establishing consistent and specialized defense acquisition and follow-up systems and a clear relationship with the 'Act on Contracts in Which the State is a Party' or the 'Act on the Government Procurement Program.'



## 4. The 'Defense Acquisition Program Act'

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- ◆ Recognizing these problems, the government sought for a solution to reinforce the transparency, efficiency and expertise of defense acquisition services and the competitiveness of the defense industry, and as a result, it merged acquisition organizations dispersed in military services and the Ministry of National Defense into the Defense Acquisition Program Agency. In 2006, it established the 'Defense Acquisition Program Act' by combining the content of the 'Act on Special Measures for Defense Industry,' the 'Act on the Management of Military Supplies' and the 'Defense Acquisition Management Regulation,' thereby reforming the overall defense acquisition system.



## V. Contracting and Awarding Criteria of Public Procurement

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1. Contracting Type
2. Awarding Method



# 1. Contracting Type

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- ◆ Korea's 'Act on Contracts in Which the State is a Party' (hereinafter CGCA) presents four types of contracting: open-competition bidding, limited-competition bidding, selective-competition bidding and direct contracting. Open-competition bidding is the principal method used, and the other types are allowed only when specific legal requirements are met.
- ◆ For example, limited-competition bidding is allowed for the manufacturing and purchase of articles designated and noticed by the Minister of SMEs and Startups according to the 'Act on Facilitation of Purchase of Small and Medium Enterprise-manufactured Products and Support for Development of Their Markets.'
- ◆ In addition, direct contracting is allowed when any product certified for performance under the 'Act on Facilitation of Purchase of Small and Medium Enterprise-manufactured Products and Support for Development of Their Markets' is purchased from an SME.

# 1. Contracting Type

- ◆ The following table shows statistics on the share of each contracting type.

[Table] Share of each contracting type (Unit: KRW 100million, %)

Category	2015	2016	2017	2018	2019
Open-competition bidding	112,603 (30.8)	115,274 (32.3)	131,090 (33.8)	141,478 (36.0)	165,224 (35.9)
Limited-competition bidding	195,394 (53.5)	174,035 (48.8)	187,395 (48.3)	180,743 (46.0)	220,320 (43.6)
Selective-competition bidding	750 (0.2)	709 (0.2)	467 (0.1)	876 (0.2)	748 (0.2)
Direct contracting	56,364 (15.4)	66,514 (18.7)	68,716 (17.7)	69,919 (17.8)	93,574 (20.3)

- ◆ The above statistics show that limited-competition bidding has the largest share.

This is largely attributed to two factors. One is the intent to limit the scope of competitors to those who can faithfully implement contracts and the other is the intent to utilize public procurement for various socio-economic policy objectives, such as the inter-SME competition tender system and locally limited bidding system.



## 2. Awarding Method

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- ◆ There are various awarding methods and one of them is the 'Qualification Assessment Awarding System.' This system assesses the contract performance capabilities of bidders in the order of lower bid prices not exceeding the expected price. The contract performance capabilities assessment comprehensively assesses the bidder's performance records, technical capabilities, financial conditions, faithfulness in past contract performance, appropriateness of materials and manpower procurement prices, subcontractor management plan and subcontracted worker labor condition implementation plan, contract and order compliance level and quality level and bidding price.
- ◆ Another method is the 'Comprehensive Assessment Awarding System.' This system assesses each bidder's bidding price, works performance capabilities (service performance capabilities) and social responsibility performance comprehensively and awards the contract to the bidder who has the highest score. This system was introduced in order to reform the awarding system focused on lower prices, but it has also been criticized in that bidding price is still a critical part of awarding criteria.



## 2. Awarding Method

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- ◆ Another award system is 'Contracting by Negotiation.' When it is recognized to be necessary in goods and services contracts for the purpose of expertise, technology and urgency of contract performance, safety of public facilities or other national security objectives, the head or contracting officials of each central government agency may receive and assess proposals from multiple suppliers and make a contract with the person who is recognized to be most advantageous to the state through negotiation procedures.



## VI. Settlement of Disputes Related to Public Procurement

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1. Petition for Objections against Ordering Institutions
2. Conciliation by the State Contract Disputes Conciliation Committee





# 1. Petition for Objections against Ordering Institutions

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- ◆ One of the systems for settling disputes against ordering institutions related to government contracts is the System for Filing Petitions. A person whose interest is prejudiced by an act conducted by the head or contracting officer of a central administrative agency in the course of handling a government procurement contract for an amount equivalent to or greater than a certain amount may file a petition for objection, seeking the revocation or rectification of such act.
- ◆ Acts subject to such petitions for objection include 1) a matter regarding the scope of a government procurement contract for which international tendering is called, 2) a matter regarding qualification for participation in tendering procedures, 3) a matter regarding the public tender notice, etc., 4) a matter regarding the determination of a successful tenderer, 5) a matter regarding the adjustment of contract prices and 6) a matter concerning penalty for delay and the scope of inclusion of the days delayed.



# 1. Petition for Objections against Ordering Institutions

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- ◆ A petition for objection must be filed to the head of the competent central government agency within fifteen days from the date on which the act constituting the cause of the petition was conducted or within ten days from the date on which the petitioner becomes aware that such act was conducted.
- ◆ A person who has an objection against a measure taken under a petition for objection may file a petition for review, seeking conciliation by the State Contract Disputes Conciliation Committee. (The CGCA, Article 28 Paragraph 4, Article 29)



## 2. Conciliation by the State Contract Disputes Conciliation Committee

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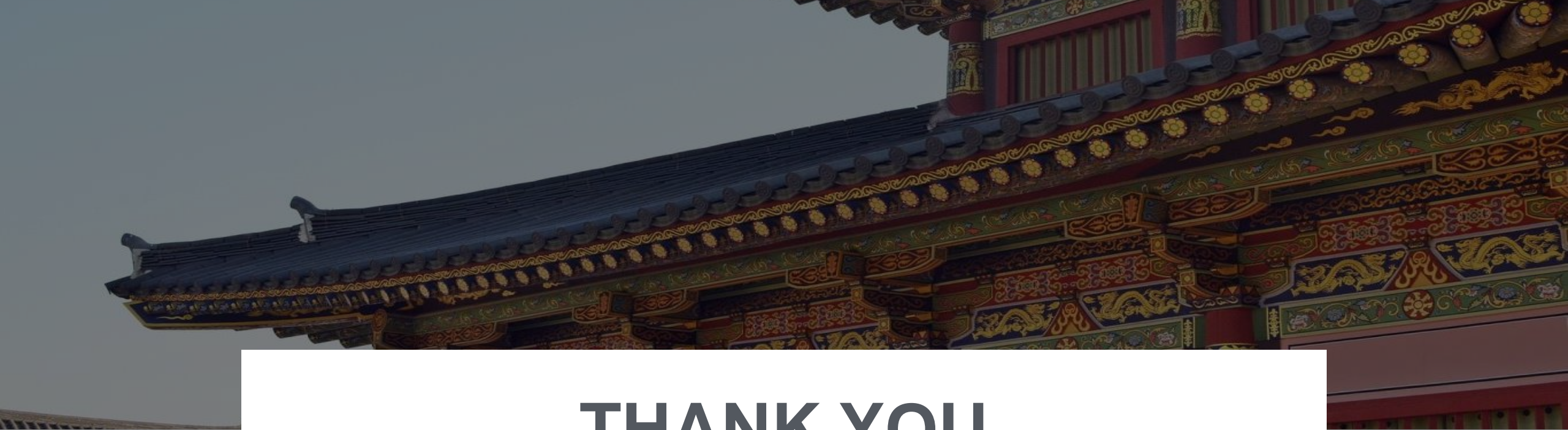
- ◆ The Committee must conduct examination and conciliation within 50 days from the date a petition for review is filed, except in an exceptional situation. Upon receipt of the notice of a filed petition, the head of a central government agency must submit his/her opinion thereon in writing to the Committee within fourteen days.
- ◆ The Committee may require that the petitioner and the head of the competent central government agency submit relevant documents related to the petition and may also request specialized institutions conduct appraisals, examinations, or tests, if necessary.
- ◆ The Committee may issue an order to defer the relevant tendering procedure or suspend the execution of the relevant contract until conciliation proceedings are closed if it deems it necessary to do so, considering the opinions from the head of the competent central government agency.



## 2. Conciliation by the State Contract Disputes Conciliation Committee

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- ◆ The Committee must give opportunities to express opinions to the petitioner and the head of the competent central government agency before closing examination and conciliation, and may also summon the petitioner, the head of the competent central government agency, their representatives, and witnesses or relevant experts to the Committee to hear their opinions, if necessary.
- ◆ According to the results of the examination, the Committee must then prepare a draft conciliation agreement and must notify the petitioner and the head of the competent central government agency thereof.



**THANK YOU**

