



Exclusion System Summary China

I. Government-Wide Legal and Institutional Framework:

Government-Wide Exclusion Framework? Yes.

- Exclusion decisions are made outside the procurement process and according to national legislation or centralized regulations. Most exclusions have government-wide effect, while others apply only to the procurement at issue.

Governing Policy: Two primary pieces of legislation.

- The Bidding Law: Generally applicable to select works and construction projects:
 - Art. 53, Art. 54, and Art. 60 ([Eng & Chi](#)).
 - Art. 67 and Art. 68 of Implementing Regulations (Partial [Eng / Chi](#)).
- The Government Procurement Law: Applicable to all procurements not covered by the Bidding Law:
 - Art. 13, Art. 22, and Art. 77 ([Eng / Chi](#)).
 - Art. 19, Art. 73, and Art. 74 of Implementing Regulations ([Eng / Chi](#)).

Other Related Regulations:

- Administrative Procedure Law ([Eng / Chi](#)).
- Administrative Reconsideration Law ([Eng / Chi](#)).
- Measures for Challenges and Complaints against Government Procurement (Partial [Eng / Chi](#)).

Primary Legal Foundation:

- Administrative/Regulatory Law.

Decision-Maker: Centralized; Functionally Independent from Senior Procurement Officials.

- The finance departments at all levels of government are charged with supervising procurement activities and making exclusion decisions.

Qualification: The Government Procurement Law generally requires procurement personnel to possess relevant professional qualities and skills.

Independence: Yes. The Government Procurement Law requires a separation between the finance departments and procurement officials.

II. Functioning and Enforcement of the Government-Wide Exclusion System:

General Provisions:

Type of Procedures: Administrative.

Decision Deadline: Decision-maker must make a final determination within 30 days.

Provisional Exclusions: Yes, but provisional exclusions may not exceed 30 days.

Commencement of Proceedings: Ability to Initiate an Exclusion Proceeding.

- Decision-maker can initiate an exclusion proceeding without a prior referral.
- Non-governmental parties can submit complaints to the decision-maker.

Notice Requirements & Opportunity to be Heard: Yes & Yes.

Notice of Proceedings:

- Suppliers receive notice of proceedings when:
 - An investigation into the underlying grounds is commenced.
 - Decision-maker decides that grounds exist.
- Notice of proceedings is required to contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier; relevant details are also included in the public exclusion list.

Opportunity to be Heard:

- Suppliers are entitled to present a defense to the decision-maker and may:
 - Obtain the evidentiary record.
 - Make a written submission to the decision-maker.
 - Request an in-person hearing with the decision-maker (although complaints are generally addressed on the written record only).
 - Call witnesses to an in-person hearing to testify.

Appellate Review of Exclusion Decisions: Yes.

Nature and Forum of Review: Administrative and Judicial.

- Suppliers can request reconsideration before the relevant administrative body.
- Suppliers can also initiate an action for review before the people's court, with or without first requesting reconsideration before the administrative body.

Means Available to the Supplier: As part of appellate review, suppliers may:

- Obtain the evidentiary record.
- Make a written submission to the decision-maker.
- Request an in-person hearing with the decision-maker.
- Call witnesses to an in-person hearing to testify on the supplier's behalf.

Duration of Appeal Process: Within 60 days for administrative reconsiderations.

Legal Representation: A supplier **may** be represented by counsel.

Subsequent Modification of Exclusion Decision: No.

- Except through the appeal process described above, a supplier is not entitled to any opportunity to seek a modification or early termination of exclusion after it goes into effect.

III. Substantive Grounds for Government-Wide Exclusion:

Automatic Exclusion: Yes.

Bidding Law:

Based on an administrative finding that the supplier engaged in the following:

- Corruption;
- Fraud;
- Collusion and/or infringing competition.

Government Procurement Law:

Based on a supplier's criminal, civil, or administrative judgement for the following grounds pursuant to Art. 77:

- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Coercion or intimidation;
- Refusing to sign public contracts after award without proper justification;
- Falsifying information and/or using illegally obtained information in filing a complaint against another supplier.

Based on a supplier's administrative or criminal judgment for the following grounds pursuant to Art. 22:

- Tax-related offenses; and
- Material malpractices and illegal acts, including but not limited to:
 - Obstructing an investigation;
 - Theft or embezzlement;
 - Money laundering;
 - Labor-related offenses;
 - Social harms;
 - Terrorist offenses or offenses linked to terrorism;
 - Commercial regulatory violations.

Discretionary Exclusion: Yes.

Bidding Law & Government Procurement Law:

Based on an administrative finding that the supplier engaged in:

- Poor performance, non-performance, and/or failure to perform on public contracts.

When a basis for discretionary exclusion is established, the decision-maker may decide not to exclude a supplier depending on the severity of the supplier's actions. A supplier may also avoid exclusion by implementing remedial measures to address its adherence to certain non-substantive requirements in a procurement process.

Exclusion based on Bankruptcy and Cross-Debarment: Discretionary & Automatic.

IV. Scope and Effect of Government-Wide Exclusion:

Types of Excluded Suppliers:

- Individuals and Corporate Suppliers.

Scope of Exclusion:

Extension to Other Agencies and Organizations:

- Exclusions based on Art. 22 of the Government Procurement Law do **not** prohibit the supplier from contracting with other federal agencies (exclusion decisions are contract-by-contract), although the same facts could constitute an exclusion ground in every subsequent tender process.
- All other exclusions prohibit the supplier from contracting with any government agency and automatically extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from China.

Effect on Ongoing Contracts:

- Ongoing contracts are **not** automatically cancelled.
- Subsequent modifications to ongoing contracts are **not** affected by a supplier's exclusion.

Effect on Subcontracting:

- Excluded supplier **cannot** serve as a subcontractor.

Effect on Excluded Individuals:

- Excluded individuals **may** be employed by a corporate supplier in a role that is not directly related to the supplier's procurement activities.

Tailoring Exclusion:

- No option to tailor the exclusion to certain divisions, operating units, or business lines within a corporate supplier.

Effect on Affiliates:

Corporate Affiliates:

- Exclusion does **not** automatically extend to affiliated companies (controlling, controlled, under common control). In practice, and depending on the nature of the relationship, it is possible that a contracting authority may refuse to accept a bid from a controlled affiliate of a sanctioned supplier.

Extension to Affiliated Individuals:

Exclusion of a corporate supplier **may** extend to the supplier's project manager in certain cases in which the exclusion was based on violation of regulations during the contract's **performance**.

Duration of Exclusions:

Duration Specified in Legal Framework:

- Bidding Law: Between one and five years.
- Government Procurement Law: Between one and three years.

Duration Depends on Applicable Exclusion Ground?

- Bidding Law: Yes.
 - One to three years for corruption, fraud, and collusion.
 - Two to five years for poor performance or non-performance of a contract.
- Government Procurement Law: No, duration will depend on the circumstances of each case.

Discretion to Deviate?

- No, the decision-maker does not have discretion to deviate from the durations specified in the legal framework.

Exceptions/Waivers to Exclusions:

- No, there are no exceptions in which a contract could be awarded to an excluded supplier.

Other Sanctions: Imposition of fines.

V. Government-Wide Transparency and Exclusion List:

Official List of Excluded Suppliers? Yes, for exclusions under the Government Procurement Law only; the exclusion list is publicly available.

- <http://www.ccg.gov.cn/search/cr>
 - Most exclusions on public list are based on Art. 77 of the Government Procurement Law.
 - Public list provides information on the grounds, punishment results, punishment date, and law enforcement authorities for each listed exclusion.
- While there is no consolidated list for exclusions under the Bidding Law, the relevant local government will generally publicize their exclusion decisions. Other government departments also maintain databases related to their integrity actions. For example, the Ministry of Housing and Urban-Rural Development maintains a database of actions against construction entities (<http://jzsc.mohurd.gov.cn/since/index>).

Procurement Checks: Suppliers are required to provide relevant certifications to support their eligibility to participate in a procurement; procuring entities may use this information to investigate the supplier's qualifications.

Reporting on Exclusions:

Number of Exclusions: Figures are discernible from the [public exclusion list](#) for the Government Procurement Law. As of March 19, 2021, there were 648 names on the list.

Regular Reporting: Under the Government Procurement Law, decisions made by finance departments shall be published on the media designated by the finance department under the people's government above the provincial level.

Other Transparency Mechanisms: None.

VI. Limited Scope Exclusion Systems:

Entity-Wide (e.g., Single-Agency) Exclusion? No.

Contract-By-Contract (e.g., Single-Tender) Exclusion? Yes, per Art. 22 of the Government Procurement Law.

Subnational Exclusions:

- Exclusion mechanisms exist at the Provincial/State and Municipal/Local levels.
- Exclusion decisions of one subnational body are recognized by other Provinces/State/Municipal/Local levels.