



Exclusion System Summary Costa Rica

I. Government-Wide Legal and Institutional Framework:

Government-Wide Exclusion Framework? Yes.

- Exclusion decisions are generally made both as part of a procurement process and outside the procurement process as governed by national legislation or centralized regulations. Certain exclusions have government-wide effect while others apply only to the procuring entity that imposed the exclusion.

Governing Policy:

- Arts. 100 to 103 of [the Public Procurement Law](#) and Arts. 223 to 226 of [Regulation to the Public Procurement Law](#).

Primary Legal Foundation:

- Administrative/Regulatory Law.

Related Law and Regulation:

- Art. 19 of [Regulation to the Public Procurement Law](#).

Decision-Maker: Both Centralized and Individual Contracting Officers; Not Functionally Independent from Senior Procurement Officials.

- Both the General Comptroller of the Republic ("CGR") and individual contracting authorities can make exclusion decisions.

Qualification:

- None stated in the legal framework.

Independence:

- Not functionally independent from senior procurement officials.

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

General Provisions:

Type of Procedures: Administrative.

Decision Deadline: No stated deadline for the decision-maker to make a final determination.

Jurisprudence provides that the time period should be reasonable based on the individual circumstances of each case.

Provisional Exclusions: None.

Commencement of Proceedings: Ability to Initiate an Exclusion Proceeding.

- The decision-maker can make an exclusion decision without a prior referral.
- Non-governmental parties cannot submit complaints and/or evidence to the decision-maker.

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

Notice:

- Suppliers receive notice when the decision-maker decides that grounds exist.
- Notice must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier only, but a brief summary of the basis for the exclusion is included in the publicly available 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;
 - Call witnesses to an in-person hearing to testify on the supplier's behalf.
- Suppliers also have other generally applicable due process rights.

Appellate Review of Exclusion Decisions: Yes.

Nature and Forum of Review: Administrative.

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

- Obtain the evidentiary record;
- Make a written submission to the appellate body.

Duration of Appeal Process: One to six months (on average).

Legal Representation:

- A supplier **may** be represented by counsel.

Subsequent Modification of Exclusion Decision:

- No. 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.

Based on a supplier's administrative judgement for the following:

- Corruption;
- Fraud;
- Repeated poor performance within three years of initial warning;
- Illegally obtaining confidential information that provides competitive advantages;
- Using subcontractors different from those disclosed to execute the contract.

Discretionary Exclusion: Yes.

Based on a criminal or civil judgement against the supplier for the following:

- Collusion and/or infringing competition.

Based on an administrative finding against the supplier for the following:

- Collusion and/or infringing competition;
- Poor performance, non-performance, and/or failure to perform on public contracts.

The discretionary exclusion is a case-by-case analysis using a reasonableness and proportionality test. If exclusion is considered disproportionate, the supplier may not be sanctioned.

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

IV. Scope and Effect of Government-Wide Exclusion:

Types of Excluded Suppliers:

- Individuals and Corporations.

Scope of Exclusion:

Extension to Other Agencies and Organizations:

- Exclusions based **only** on the following grounds prohibit the supplier from contracting with any federal agency or subnational government (*i.e.*, the entire Public Administration):
 - Corruption;
 - Fraud;
 - Illegally Obtaining Confidential Information;
 - Certain offenses committed during execution of public infrastructure projects; and
 - Suppliers excluded a second time by the same procuring entity.
- Except for exclusions based on the grounds in the previous bullet, first-time exclusions are generally limited to the procuring entity that imposed the exclusion and do **not** extend across the entire federal agency or subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from Costa Rica.

Effect on Ongoing Contracts:

- Ongoing contracts are **not** automatically cancelled.
- Subsequent modifications to ongoing contracts **are permitted** when the supplier is the only one suitable in the market for the provision of the goods or services needed.

Effect on Subcontracting:

- Nothing in the legal framework prohibits an excluded supplier from acting as a subcontractor.

Effect on Excluded Individuals:

- No explicit provision in the legal framework; however, it is likely that excluded individuals **may** be employed by a corporate supplier in a role that is not directly related to the supplier's ongoing contracts.
- Exclusion **does not** automatically extend to companies controlled by the excluded individual, although it could extend if the individual appears to be using these companies to evade the exclusion.

Tailoring Exclusion:

- Yes. Exclusion **may** be limited to certain divisions, operating units, or business lines within the company, if the decision-maker so decides.

Effect on Affiliates:

Corporate Affiliates:

- Exclusion **may** apply to companies that the supplier controls. Decisions on affiliates are evaluated on a case-by-case basis. Affiliates used to evade the exclusion are likely to be covered by the exclusion.
- Affiliated companies **must** be given an opportunity to contest the action.

Extension to Affiliated Individuals:

- Exclusion of a corporate supplier **does not** extend to individuals that own or control the supplier or executive officers.

Duration of Exclusions:

Duration Specified in Legal Framework:

- Depending on the severity of the supplier's action, the exclusion duration ranges from two to ten years.

Duration Depends on Applicable Exclusion Ground? No.

- *Exception:* If the grounds for the exclusion is related to public infrastructure projects, the minimum duration is three years.

Discretion to Deviate?

- No. The decision-maker does not have discretion to deviate outside of the two- to ten-year range specified in the legal framework.

Exceptions/Waivers to Exclusions:

- Yes. A contract may still be awarded to an excluded supplier when the supplier is the only one who can provide the goods or services needed; the award must be authorized by the Comptroller's office.

Other Sanctions:

- Contractual termination; fines; execution of guarantees; warnings.

V. Government-Wide Transparency and Exclusion List:

Official List of Excluded Suppliers? Yes. It is publicly available.

- <https://www.sicop.go.cr/index.jsp> (click on "Consultat Ciudadanos" in upper right corner followed by "Sanciones" on left-hand side).
- The public list provides a brief reference to the basis for each listed exclusion (under the heading "Causa de sanción").

Procurement Checks? Yes. Procuring entities must check the list of excluded suppliers before awarding a contract.

Reporting on Exclusions:

Number of Exclusions: Figures are known through public reports issued by national government: 7 exclusions imposed in 2019, and 16 exclusion were in force as of 2019.

Regular Reporting: Yes, and the reports are publicly available.

Other Transparency Mechanisms: Consult the Integrated System on Public Purchases (SICOP).

VI. Limited Scope Exclusion Systems:

Entity-Wide (e.g., Single-Agency) Exclusion? Yes.

Contract-by-Contract (e.g., Single-Tender) Exclusion? No.

Subnational Exclusions:

- Exclusion mechanisms exist at the Municipal/Local levels (national regulations apply to municipalities).
- Exclusion decisions of one subnational body do not extend to other subnational bodies.