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.
*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](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.