



Exclusion System Summary Guatemala

I. Government-Wide Legal and Institutional Framework:

Government-Wide Exclusion Framework? Yes.

- Exclusion decisions can be made both as part of a procurement process and outside the procurement process as governed by national legislation or centralized regulations. Exclusions have government-wide effect.

Governing Policy:

- Art. 80 of the [Public Procurement Law](#), Decree No. 57-92, as amended by Decree No. 46-2016.

Primary Legal Foundation:

- Criminal Law; Civil/Tort Law; Administrative/Regulatory Law.

Related Law and Regulation:

- [Regulation of the Public Procurement Law](#), Government Agreement No. 172-2017.

Decision-Maker: Centralized, at Agency Level, and Judicial Authority; Agency Decision-Makers Are Not Functionally Independent from Senior Procurement Officials.

- Central Office of Registered State Providers.
- Judicial authority could issue a ruling that results in an exclusion by the Central Office of Registered State Providers.
- Contracting authorities are also required to register a supplier's disqualification whenever they determine that a supplier is disqualified based on applicable legislation.

Qualification:

- At least ten years' experience as an active professional; no criminal record; full enjoyment of civil rights.

Independence:

- Agency decision-makers are not functionally independent from senior procurement officials.

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

General Provisions:

Type of Procedures: Criminal and Administrative.

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

Provisional Exclusions: Yes, for example:

- Pending payment of tax or social security obligations (full payment will terminate the exclusion); or
- Successful bidder's failure to sign the contract (suspension for one year, recidivism results in permanent exclusion).

Commencement of Proceedings:

Ability to Initiate an Exclusion Proceeding:

- Decision-maker can make an exclusion decision without a prior referral.
- Non-governmental parties can submit complaints and/or evidence to the decision-maker.

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

Notice:

- Suppliers receive notice when the exclusion, including any provisional exclusions or suspensions, becomes effective.
- Notice must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier (not to the public).

Opportunity to be Heard:

- Suppliers are entitled to present a defense to the decision-maker and may make a written submission to the decision-maker.

Appellate Review of Exclusion Decisions: Yes.

Nature and Forum of Review: Administrative and Judicial (after exhaustion of administrative process).

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

- Obtain the evidentiary record;
- Make a written submission to the appellate body;
- Call witnesses to an in-person hearing to testify on the supplier's behalf.

Duration of Appeal Process: Six months to one year (administrative process could take up to one year, but a subsequent judicial process could take years).

Legal Representation:

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

Subsequent Modification of Exclusion Decision: Yes, but only for exclusions based on pending tax or social security payments; full payment will terminate the exclusion.

III. Substantive Grounds for Government-Wide Exclusion:

Automatic Exclusion: Yes.

Based on a criminal conviction or civil judgement that the supplier engaged in the following:

- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Coercion or Intimidation;
- Obstruction of an investigation;
- Theft or embezzlement;
- Money laundering;
- Tax-related offenses;
- Labor-related offenses;
- Social harms;
- Terrorist offenses or offenses linked to terrorism;
- Commercial regulatory violations;
- Poor performance, non-performance, and/or failure to perform on public contracts.

Based on an administrative (*i.e.*, non-judicial) finding that the supplier engaged in the following:

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

Discretionary Exclusion: No. However, the decision-maker may decide not to exclude a supplier upon determining that a sanction other than exclusion would be more appropriate.

Exclusion based on Bankruptcy and Cross-Debarment: Automatic & None.

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 prohibit the supplier from contracting with any federal agency.
- Exclusions automatically extend to subnational procurements.
- No known countries or international organizations that automatically recognize and apply exclusions from Guatemala.

Effect on Ongoing Contracts:

- Ongoing contracts are automatically cancelled.

Effect on Subcontracting:

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

Effect on Excluded Individuals:

- Excluded individuals **must not** be employed by a corporate supplier in any capacity.
- Exclusion **may** extend to companies controlled by the excluded individual.

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 **must** extend to controlled companies and **may** apply to controlling companies and companies that are under common control.
- Affiliated companies are **not** required to have an opportunity to contest the action.

Extension to Affiliated Individuals:

- Exclusion of a corporate supplier **must** extend to individuals that own or control the supplier, its executive officers, and its managers and **may** extend to its employees.
- Affiliated individuals are **not** required to have an opportunity to contest the action.

Duration of Exclusions:

Duration Specified in Legal Framework: Between one and five years.

Duration Depends on Applicable Exclusion Ground? Yes.

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:

- There is no legal mechanism whereby a contract might still be awarded to an excluded supplier during the period of exclusion.

Other Sanctions:

- Economic fines and suspension.

V. Government-Wide Transparency and Exclusion List:

Official List of Excluded Suppliers? Yes, and it is publicly available.

- <http://www.guatecompras.gt/inhabilitaciones/consultaProveeInhabRes.aspx>.
- The public list provides information on the grounds for each listed exclusion.

Procurement Checks:

- No. Procuring entities are not required to check a list of excluded suppliers before awarding a contract. However, suppliers must be registered with the Central Office of Registered State Providers in order to compete for procurement contracts.

Reporting on Exclusions:

Number of Exclusions: Figures unknown but could be discernible. The debarment list is from 2011 to the present.

Regular Reporting: The exclusion list is updated regularly.

Other Transparency Mechanisms: Information on exclusions could be obtained by a written request through the Public Information Law.

VI. Limited Scope Exclusion Systems:

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

Contract-By-Contract (e.g., Single-Tender) Exclusion? No. While a contracting authority may exclude a supplier during the course of a procurement process, the exclusion has government-wide effect.

Subnational Exclusions: No.