



# Exclusion System Summary Honduras

## I. Government-Wide Legal and Institutional Framework:

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### Government-Wide Exclusion Framework? Yes.

- Exclusion decisions are made on a contract-by-contract basis as governed by national legislation or centralized regulations. Most exclusions apply only to the procurement at issue. Other exclusions result in the suspension of a supplier's contractor registration, which is required for most procurements.

#### Governing Policy:

- Arts. 15, 16, 132-141 of the Government Procurement Law (Ley de Contratación del Estado (revisada diciembre 2016), available at <http://www.oncae.gob.hn/biblioteca-virtual> under Normas de Contratación).

#### Primary Legal Foundation:

- Administrative/Regulatory Law.

#### Related Law and Regulation:

- Arts. 28, 55 of the Government Procurement Regulations (Reglamento Ley de Contratación del Estado, available at <http://www.oncae.gob.hn/biblioteca-virtual> under Normas de Contratación).

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

- Individual contracting authorities make exclusion decisions within each procurement procedure (contract-by-contract exclusion).

#### Qualification:

- The legal framework does not require the decision-maker to have certain educational or professional qualifications.

#### Independence:

- Not functionally independent from senior procurement officials.

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

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### General Provisions:

*Type of Procedures:* Administrative.

- The initial exclusion decision is made as part of the procurement process, which is an administrative process.
- Any subsequent proceedings are governed by administrative law.

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

*Provisional Exclusions:* None.

**Initial Procurement Decision:** Grounds for exclusion are reviewed by the contracting authority as part of the procurement decision on a contract-by-contract basis.

- 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 of proceedings when:
  - The decision-maker decides that grounds exist; and
  - 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:
  - Obtain the evidentiary record.
  - Make a written submission to the decision-maker.

**Appellate Review of Exclusion Decisions:** Yes.

*Nature and Forum of Review:* Administrative and Judicial.

- Suppliers can request reconsideration before the relevant administrative body and, if denied, appeal to a higher administrative organ.
- After the administrative appeal, suppliers can file suit in the Court of Administrative Litigation.

*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:* Six months to one year.

### 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:

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**Automatic Exclusion:** Yes.

Based on a criminal conviction, civil judgement, or administrative (*i.e.*, non-judicial) finding 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;
- Terrorist offenses or offenses linked to terrorism;
- Commercial regulatory violations;
- Poor performance, non-performance, and/or failure to perform on public contracts.

Other Exclusion Grounds:

- Suppliers connected to public officers (and their relatives) cannot participate in public procurements.
- Suppliers that have participated as advisors or consultants for any part of the bidding process are excluded from that bidding process.

**Discretionary Exclusion:** No. However, a supplier can avoid exclusion by taking sufficient remedial measures to address the basis for exclusion.

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

*Cross-Debarment:* Exclusions by other jurisdictions are evaluated by a procurement's evaluating committee, which decides whether to also exclude the supplier.

### IV. Scope and Effect of Government-Wide Exclusion:

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**Types of Excluded Suppliers:**

- Individuals and Corporations.

**Scope of Exclusion:**

*Extension to Other Agencies and Organizations:*

- Most exclusions do **not** prohibit the supplier from contracting with other federal agencies (exclusion decisions are contract-by-contract). Other exclusions result in the suspension of a supplier's contractor registration, which is required for most procurements across the national government.
- Exclusions do **not** extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from Honduras.

#### *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:*

- An 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 **must** 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 **may** apply to affiliated companies (controlling, controlled, under common control).
- Affiliated companies **must** be given 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, executive officers, managers, and employees.
- Affiliated individuals **must** be given an opportunity to contest the action.

### **Duration of Exclusions:**

#### *Duration Specified in Legal Framework:*

- Suspensions of a supplier's registration can last from one to five years. The duration of other exclusions is not specified in the legal framework, except for exclusions based on contract termination.

#### *Duration Depends on Applicable Exclusion Ground? Yes.*

- Exclusions based on a supplier's default termination of any contract are for two years. If the supplier defaults again, the exclusion is indefinite. (See art. 15(5) of the Government Procurement Law)

*Discretion to Deviate? No.* The decision-maker does not have discretion to deviate from the duration specified in the legal framework.

### **Exceptions/Waivers to Exclusions:**

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

### **Other Sanctions:**

- The contracting authority may terminate any public contract after finding that an automatic exclusion ground against the contractor existed at the time of the contract's award, which should have resulted in the contractor's exclusion from the procurement. (See art. 32 of the Regulations).

## V. Government-Wide Transparency and Exclusion List:

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**Official List of Excluded Suppliers?** No.

- The Registry of Suppliers and Contractors does not disclose suspended suppliers or other exclusions.

**Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown.

*Regular Reporting:* No requirement for regular reporting on exclusions.

*Other Transparency Mechanisms:* None.

## VI. Limited Scope Exclusion Systems:

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

**Contract-By-Contract (e.g., Single-Tender) Exclusion?** Yes. See above.

**Subnational Exclusions:**

- Exclusion mechanisms do not exist at the Provincial/State or Municipal/Local levels.