



# Exclusion System Summary Nicaragua

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

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### Government-Wide Exclusion Framework? Yes.

- Exclusion decisions are made outside the procurement process and according to national legislation or centralized regulations. Exclusions have government-wide effect.

#### Governing Policy:

- Art. 18 and Ch. IX, Sec. II of [Law N° 737](#) “Public Sector Administrative Procurement Law” of 2010.
- Ch. VIII, Sec. II of [Law N° 801](#) “Municipal Administrative Procurement Law” of 2012.
- Title XIX of [Law N° 641](#) (Criminal Code of 2007).

#### Primary Legal Foundation:

- Administrative/Regulatory Law.

#### Related Law and Regulation:

- Bylaws of [Law N° 737](#).

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

- The General Directorate of Government Procurement (“DGCE”) makes exclusion decisions.

#### Qualification:

- None stated in the legal framework.

#### Independence:

- Yes. 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.

*Decision Deadline:* Decision-maker **must** make a determination within ten business days.

*Provisional Exclusions:* None.

**Commencement of Proceedings:** Ability to Initiate an Exclusion Proceeding.

- Decision-maker cannot initiate an exclusion proceeding without a prior referral from the procuring entity or the Office of the Comptroller General.
- Non-governmental parties cannot submit complaints and/or evidence to the decision-maker. Third parties can, however, file criminal complaints that could result in sanction.

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

*Notice of Proceedings:*

- Suppliers receive notice of proceedings when:
  - The decision-maker becomes aware of potential grounds for exclusion.
  - The decision-maker decides that grounds exist.
- Notice of proceedings must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier and 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.
  - Request an in-person hearing with the decision-maker.
  - Call witnesses to an in-person hearing to testify on the supplier's behalf.

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

*Nature and Forum of Review:* Administrative.

- The supplier may appeal its exclusion to the Ministry of Finance within three business days.

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

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

*Duration of Appeal Process:* The legal framework requires the appeal to be decided within ten business days.

**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 its exclusion after it goes into effect.

### III. Substantive Grounds for Government-Wide Exclusion:

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**Automatic Exclusion:** Yes.

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

- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Coercion or intimidation;
- Obstruction of an investigation;
- Theft or embezzlement;
- Money laundering;
- Tax-related offenses;
- Social harms;
- Terrorist offenses or offenses linked to terrorism.

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

- Poor performance, non-performance, and/or failure to perform on public contracts;
- Corruption;
- Fraud;
- Illegally obtaining confidential information;
- Failing to comply with the required contractual guarantees;
- Participating in a contracting procedure despite being subject to a prohibition.

*Note:* Decision-maker may decide to resolve potential claims through a settlement with the supplier before any finding of culpability. However, if it is held that applicable grounds exist, the supplier must be excluded. Hence, settlements are available only in cases where civil or criminal liability is not presumed.

**Discretionary Exclusion:** None.

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

### 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:*

- Exclusions prohibit the supplier from contracting with any federal agency.
- Exclusions do **not** extend to subnational governments (municipal governments have a separate vendor registration process).
- No known countries or international organizations that automatically recognize and apply exclusions from Nicaragua.

#### *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 any capacity (the legal framework does not expressly address this circumstance).
- 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 does **not** automatically apply to affiliated companies (the legal framework does not expressly address this circumstance).

#### *Extension to Affiliated Individuals:*

- Exclusion of a corporate supplier **may** 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:* Between one and three years.

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

- One year for: (i) breach or failure to complete a contract; (ii) presenting false information in the bidding process; and (iii) breach of applicable warranty conditions. (Art. 106 of Law 737)
- Three years for: (i) second sanction; (ii) illegally obtaining confidential information; (iii) offering benefits to public officials; and (iv) providing lesser quality products or services. (Art. 105 of Law 737)

#### *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 not a legal mechanism whereby a contract might still be awarded to an excluded supplier during the period of exclusion.

**Other sanctions:** Contract termination; damages; and criminal or civil sanctions.

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

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

- The General Directorate of State Procurement maintains a [Central Registry of Suppliers](#).
- Public list does **not** provide information on the grounds for each listed exclusion.

**Procurement Checks:**

- Yes. Procuring entities must check a list of excluded suppliers before awarding a contract.

**Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown (but discernable from public exclusion list).

*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?** No.

**Subnational Exclusions:**

- Exclusion mechanisms exist at the Municipal/Local levels. Law 801 mirrors Law 737 and prescribes similar exclusion procedures to subnational bodies.
- Exclusion decisions of one subnational body are recognized by other subnational bodies.