



Exclusion System Summary

Serbia

I. Government-Wide Legal and Institutional Framework:

Government-Wide Exclusion Framework? Yes.

- Exclusion decisions are made on a contract-by-contract basis as governed by national legislation or centralized regulations. Exclusions apply only to the procurement at issue.

Governing Policy:

- The [Law on Public Procurement \(Off. Gazette of RS No. 91/2019\)](#), most of which became effective on July 1, 2020.
- Arts. 111-113 set forth exclusion grounds and self-cleaning opportunities and are consistent with Art. 57 of Directive 2014/24/EU of the European Parliament.
- Art. 128, para. 2 provides for a register of suppliers.

Primary Legal Foundation:

- Administrative/Regulatory Law.

Related Law and Regulation:

- Arts. 75-79 of the previous [Law on Public Procurement](#) (Off. Gazette of RS Nos. 124/2012, 14/2015 and 68/2015), which has been superseded by Law No. 91/2019.
- Arts. 27-29 of the [Law on the Liability of Legal Entities for Criminal Offences \(Off. Gazette of RS no. 98/2008\)](#) provide that a supplier may be prohibited from participating in public procurement for up to ten years following a criminal conviction.

Decision-Maker: Public Procurement Commission within each Agency; Not Functionally Independent from Senior Procurement Officials.

- Each procurement is conducted by a Public Procurement Commission appointed by the procuring entity. One of the Commission's many duties is to review bidder qualifications and make exclusion decisions. (Art. 92 of the Law on Public Procurement)

Qualification:

- At least one Commission member must be a public procurement officer or have a law degree. Other members of the Commission must have public procurement experience. (Art. 92 of the Law on Public Procurement)

Independence: 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, but it must be before the contract's award.

Provisional Exclusions: No. However, a supplier may effectively be excluded if the procuring entity asks, and receives permission, to override the stay imposed on the procurement process while the supplier's challenge of its exclusion is ongoing. (Art. 216 of the Law on Public Procurement)

Initial Procurement Decision: Grounds for exclusion are reviewed by the procuring entities, through their Public Procurement Commissions, as part of the procurement decision on a contract-by-contract basis.

- Decision-maker can make an exclusion decision without a prior referral.
- Interested non-governmental parties (e.g., economic entities, candidates, and bidders) can challenge actions of the procuring entity by submitting a request for "protection of rights." (Art. 214 of the Law on Public Procurement)

Notice Requirements & Opportunity to be Heard: Yes & No.

Notice:

- Suppliers receive notice when the exclusion becomes effective.
- Notice must contain the grounds for exclusion.
 - The Public Procurement Commission documents the procurement in a report, including the reasons for the exclusion or rejection of any offerors. (Arts. 145-146 of the Law on Public Procurement)
- Decision-maker must make reasoning available to the supplier and the public; award decisions must be published on the Public Procurement Portal. (Art. 146 of the Law on Public Procurement)

Opportunity to be Heard:

- Not before the exclusion becomes effective, although bidders are generally required to include in their bids evidence regarding the absence of exclusion grounds. (Art. 118 of the Law on Public Procurement)
- Suppliers may also attend the review of offers and provide explanations.

Appellate Review of Exclusion Decisions: Yes.

Nature and Forum of Review: Administrative and Judicial.

- Supplier initiates the appeal process by submitting a request for "protection of rights" to the procuring entity's Public Procurement Commission. Following a decision, the supplier may appeal for a second review by the centralized Republic Public Procurement Commission. (Arts. 204, 214-227 of the Law on Public Procurement)
- Decisions of the Republic Commission are final and unappealable. Suppliers may initiate an "administrative dispute" before the administrative court, but this will not delay the execution of the Republic Commission's decision. (Art. 228 of the Law on Public Procurement)

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: Less than one month.

Legal Representation:

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

Subsequent Modification of Exclusion Decision: Yes ("Self-Cleaning").

- Except through the appeal process described above, a supplier is **not** entitled to seek a modification of any decision to exclude it from a procurement process after it goes into effect.
- A supplier **may**, however, include evidence of sufficient measures to demonstrate its reliability (*i.e.*, "self-cleaning") with any subsequent bids submitted to a procuring entity. (Art. 113 of the Law on Public Procurement).

III. Substantive Grounds for Government-Wide Exclusion:

Automatic Exclusion: Yes.

Based on a supplier's criminal conviction for the following (Art. 111 of the Law on Public Procurement and various provisions of the Criminal Code):

- Corruption;
- Fraud;
- 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;
- Other:
 - Other criminal offenses (*e.g.*, conspiracy, organized crime);
 - Suppliers may also be prohibited by a court of law from participating in public procurement proceedings or performing a profession, activity, or duty. (Art. 85 of the Criminal Code and Arts. 23, 28 of the Law on Liability of Legal Entities for Criminal Offenses)

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

- Corruption;
- Fraud;
- Coercion or intimidation;
- Obstruction of an investigation;
- Theft or embezzlement;
- Money laundering;
- Tax-related offenses;
- Labor-related offenses;
- Social harms;
- Other:
 - Not registered with the competent authority;
 - Conflict of interest;
 - Attempting to improperly influencing the procuring entity.

Discretionary Exclusion: Yes.

Based on an administrative (*i.e.*, non-judicial) decision or finding against the supplier for the following (Art. 112 of the Law on Public Procurement):

- Fraud: submitting false evidence related to exclusion grounds or failed to provide agreed-upon evidence of compliance (Art. 118 of the Law on Public Procurement);
- Collusion and/or infringing competition;
- Poor performance, non-performance, and/or failure to perform on public contracts;
- Other:
 - Serious professional misconduct (through final judgment or decision of another competent authority);
 - Prior involvement in preparing the procurement procedure, unless the conflict can be eliminated through other means;
 - Refused to sign a contract after being selected for award.

Note on discretionary exclusion grounds:

- In Serbia, the procuring entity must decide which discretionary exclusion grounds in Art. 112 to consider before publishing the procurement documentation. Once published, the contracting authority is mandated to consider those grounds during bid evaluation. (See Art. 112 of the Law on Public Procurement)

Self-Cleaning:

- A supplier may avoid exclusion by demonstrating “self-cleaning” in almost every case – exceptions include if there is a finding that the supplier has not paid its taxes or social insurance payments; or if an exclusion is imposed by a court of law. (See Art. 113 of the Law on Public Procurement)

Exclusion based on Bankruptcy and Cross-Debarment: Discretionary & No.

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 do **not** prohibit the supplier from contracting with other federal agencies (exclusion decisions are contract-by-contract). However, the same facts could constitute an exclusion ground in every subsequent tender process.
- All government agencies apply the Law on Public Procurement, including national, provincial, and municipal agencies.
- No known countries or international organizations that automatically recognize and apply exclusions from Serbia.

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 **must not** be employed by a corporate supplier as a senior manager or corporate director, insofar as the individual is a legal representative of the supplier. (Art. 111(1) of the Law on Public Procurement)
- Exclusion **may** extend to affiliates and 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** 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 **may** extend to individuals that own or control the supplier, executive officers and managers.
- Affiliated individuals **must** be given an opportunity to contest the action.

Duration of Exclusions:

Duration Specified in Legal Framework:

- Between one and five years, up to ten years if imposed by court of law.

Duration Depends on Applicable Exclusion Ground? Yes.

- Five years maximum for automatic grounds (from the date of final conviction).
- Three years maximum for discretionary grounds (from the ground's occurrence).
- Ten years maximum for exclusions imposed by a court of law.

Discretion to Deviate?

- No. The decision-maker does not have discretion to consider any grounds that fall outside the above time limitations as a basis for exclusion.

Exceptions/Waivers to Exclusions: Yes.

- A contract may still be awarded to an excluded supplier if:
 - Necessary to respond to disasters, accidents, or other emergency situations;
 - There are "predominant reasons related to the public interest;" or
 - The supplier has "self-cleaned" – *i.e.*, presented evidence that it has taken measures to prove its reliability. (See Arts. 111 and 113 of the Law on Public Procurement)

Other Sanctions:

- None.

V. Government-Wide Transparency and Exclusion List:

Official List of Excluded Suppliers? No.

- However, Serbia does have a public register of qualified suppliers. To be registered, a supplier must, among other things, demonstrate that it is not subject the exclusion grounds listed in paras. 1 and 2 of Art. 111 of the Law on Public Procurement – relating to convictions for certain crimes and payment of taxes and social insurance. (Art. 128 of the Law on Public Procurement) The register can be found [here](#).

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:

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

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

Subnational Exclusions:

- All government agencies apply the Law on Public Procurement, including national, provincial, and municipal agencies.