

1 **CHAPTER 858. PROCUREMENT AND CONTRACT MANAGEMENT**
2 **REQUIREMENTS FOR PURCHASE OF GOODS AND SERVICES FOR**
3 **VOCATIONAL REHABILITATION SERVICES**

4
5 **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
6 ***REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
7 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**
8

9 ON **JUNE 16, 2020**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW
10 RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

11
12 Estimated date of publication in the *Texas Register*: **July 3, 2020**
13 The rules will take effect: **July 6, 2020**

14 The Texas Workforce Commission (TWC) adopts the following new sections to Chapter 858,
15 relating to Vocational Rehabilitation Services Contract Management Requirement, *without*
16 changes, as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1202):
17

18 §858.1 and §858.2
19

20 TWC adopts amendments to the following sections of Chapter 858, relating to Vocational
21 Rehabilitation Services Contract Management Requirement, *without* changes, as published in the
22 February 21, 2020, issue of the *Texas Register* (45 TexReg 1202):
23

24 §§858.3, 858.4, and §858.7 - 858.16
25

26 TWC adopts the repeal of the following sections of Chapter 858, relating to Vocational
27 Rehabilitation Services Contract Management Requirement, *without* changes, as published in the
28 February 21, 2020, issue of the *Texas Register* (45 TexReg 1202):
29

30 §§858.1, 858.2, 858.5, and 858.6
31

32 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
33 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
34

35 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

36 The purpose of the adopted Chapter 858 rule change is to align the chapter with TWC's operation
37 of the Vocational Rehabilitation (VR) services program. Texas Labor Code §351.002 transferred
38 the administration of VR services from the Texas Department of Assistive and Rehabilitative
39 Services (DARS) to TWC, effective September 1, 2016.
40

41 To ensure continuity and avoid any impact on customers, the administrative rules shared by all
42 DARS programs were duplicated into Chapters 850, 857, and 858 of TWC's rules upon transfer of
43 the programs. Because the rules established DARS' administrative framework and served all DARS
44 programs, they overlap certain existing TWC administrative rules and contain references to programs
45 that were not transferred to TWC.
46

1 To streamline TWC rules and accurately reflect TWC's program administration, several amendments
2 are needed to integrate and align overlapping sections and update outdated terms and procedures to
3 align with TWC's current program operation. This will help to ensure the health and safety of VR
4 customers, as well as help to ensure that Texans receive the best value for the expenditure of
5 available public funds for VR services.
6

7 In keeping with the goal of protecting the health and safety of VR customers and ensuring that
8 Texas receives the best value for the expenditure of available public funds for VR services, TWC
9 understands that the VR services program is a recognized health and human services entity and
10 the express authority for procuring goods and services through a noncompetitive process,
11 referred to as an enrollment contract, transferred to TWC with the VR services function. The
12 definition of an enrollment contract is found in Texas Administrative Code (TAC) 1 TAC
13 §391.103(8).
14

15 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

16 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
17 therefore, are not discussed in the Explanation of Individual Provisions.)
18

19 **TWC adopts the following amendments to Chapter 858:**

20 21 **§858.1. Purpose and Applicability**

22 Section 858.1 is repealed because the language on purpose and applicability is unnecessary and
23 inconsistent with TWC's current rulemaking framework.
24

25 **§858.1. Definitions**

26 New §858.1 updates and retains the applicable definitions from §858.2, which is currently
27 proposed for repeal, to reflect TWC's current operation of the VR program.
28

29 **§858.2. Definitions**

30 Section 858.2 is repealed to accommodate reorganization of the subchapter.
31

32 **§858.2. Noncompetitive Open Enrollment Solicitation**

33 New §858.2 adds new language from the proposed repeal of Chapter 857, that authorizes the use
34 of open enrollment solicitations.
35

36 **§858.3. General Requirements for Contracting**

37 Section 858.3 is amended to remove, update, combine, or add language and provisions accounted
38 for in the standard terms and conditions of VR services contracts, the VR Standards for Providers
39 on TWC's website, and TWC's contracting policies and procedures.
40

41 **§858.4. Complaints**

42 Section 858.4 is amended to add language specifying that TWC is the administrative agency for
43 directing complaints and requiring contractors to verify that the information they provide to
44 customers for directing complaints is current and accurate.

1
2 **§858.5. Record Requirements**

3 Section 858.5 is repealed; retention and production of contractor records is required and covered
4 by TWC’s Financial Manual for Grants & Contracts Appendix K: Record Retention & Access
5 Requirements.

6
7 **§858.6. Access to Contractor Facilities and Records**

8 Section 858.6 is repealed. Access to contractor records is required and covered by the Financial
9 Manual for Grants & Contracts Appendix K: Record Retention & Access Requirements.

10
11 **§858.7. Contract Monitoring**

12 Section 858.7 is amended to update terminology and to highlight contractor responsibility
13 regarding the monitoring and review of contracts under this chapter.

14
15 **§858.8. Corrective Action Plan**

16 Section 858.8 is amended to update terminology and to highlight contractor responsibility
17 regarding a corrective action plan. Language has been added to require that the corrective action
18 plan be acceptable to TWC and that contractors remedy all deficiencies or violations in a timely
19 manner.

20
21 **§858.9. Adverse Actions**

22 Section 858.9 is amended to update terminology and to add language that includes substantiated
23 claims of fraud against a contractor and failure to submit a corrective action plan as reasons for
24 which TWC may impose adverse actions against a contractor. Language has been modified for
25 clarity and consistency and to reflect TWC's current operation of the VR services program.

26
27 **§858.10. Debarment and Suspension of Contractors**

28 Section 858.10 is amended to update terminology and clarify the general length of debarment.
29 Subsection (d) has been modified to clarify when TWC may suspend contracts.

30
31 **§858.11. Causes and Conditions of Debarment**

32 Section 858.11 is amended to remove language stating that paragraph (3)(B) applies only to
33 actions occurring after the effective date of these rules. Additionally, language has been updated
34 for clarity and consistency with existing contract language and to reflect TWC's current
35 operation of the VR services program.

36
37 **§858.12. Causes and Results of Suspension**

38 Section 858.12(b) is amended to update terminology and to clarify the possible results of
39 suspension. Additionally, language has been updated to reflect TWC's current operation of the
40 VR services program.

41
42 **§858.13. Evidence for Debarment**

43 Section 858.13 is amended to update terminology to reflect TWC's current operation of the VR
44 services program.

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§858.14. Notice for Debarment or Suspension

Section 858.14 is amended to update terminology to reflect TWC's current operation of the VR services program.

§858.15. Appeals

Section 858.15(b) is amended to update terminology and to clarify that a notice of adverse action rendered by TWC is final for all purposes unless the contractor files an appeal not later than 28 calendar days after the date the initial adverse action is sent to the contractor. Additionally, language has been added giving TWC the discretion to grant a contractor's request for an extension of the period in which to file a notice of appeal of an adverse action upon showing of good cause. The term "appellant" has been replaced with the term "contractor."

§858.16. Request for Reconsideration

Section 858.16 is amended to update terminology and be consistent with changes in §858.15. The term "appellant" has been replaced with the term "contractor."

No comments were received.

TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301, 302, 351, and 352.

1 **CHAPTER 858. PROCUREMENT AND CONTRACT MANAGEMENT REQUIREMENTS**
2 **FOR PURCHASE OF GOODS AND SERVICES FOR VOCATIONAL**
3 **REHABILITATION SERVICES**
4

5 **§858.1 Definitions.**
6

7 In addition to the definitions contained in §800.2 of this title, the following words and
8 terms, when used in this chapter, have the following meanings, unless the context clearly
9 indicates otherwise.

- 10
- 11 (1) Amendment--A formal revision or addition to a contract.
- 12
- 13 (2) Bid--An offer to contract with the state submitted in response to a bid
14 invitation.
- 15
- 16 (3) Contract--A written agreement between the Agency and a contractor by the
17 terms of which the contractor agrees to provide goods or services, by sale or
18 lease to or for the Agency for Vocational Rehabilitation (VR) customers.
- 19
- 20 (4) Contract records--All financial and programmatic records, supporting
21 documents, papers, statistical data, or any other written or electronic materials
22 that are pertinent to each specific contract instrument.
- 23
- 24 (5) Contractor--An individual holding a written contract.
- 25
- 26 (6) Corrective action plan--Specific steps to be taken by a contractor to resolve
27 identified deficiencies and/or to address concerns that the contracting agency
28 has regarding the contractor's compliance with contract terms or other
29 applicable laws, rules, or regulations. The corrective action plan may also
30 focus on improving contractor performance (as it relates to service delivery,
31 reporting, and/or financial stability).
- 32
- 33 (7) Debarment--The termination of the ability to continue an existing contract, to
34 receive a new contract, to participate as a contractor or subcontractor, to
35 provide goods or services to Agency Vocational Rehabilitation (VR) customers
36 either directly or indirectly while working for an Agency contractor, or to
37 make a bid, offer, application, or proposal for an Agency contract.
- 38
- 39 (8) Effective date--The date of complete execution of the contract or the date upon
40 which the parties agree that the contract takes effect.
- 41
- 42 (9) Individual--Any individual, corporation, partnership, association, unit of
43 government, or legal entity, however organized, or any portion thereof.
- 44
- 45 (10) Program--Agency activities that are designed to deliver services or benefits
46 provided by statute.

- 1
2 (11) Respondent--An individual against whom the Agency has initiated a
3 debarment or suspension action.
4
5 (12) Subcontract--A written agreement between the original contractor and a third
6 party to provide all or a specified part of the goods, services, work, and/or
7 materials required in the original contract.
8
9 (13) Suspension--The temporary discontinuance of a contractor's authorization to
10 conduct business with the Agency.
11

12 **§858.2. Noncompetitive Open Enrollment Solicitation.**
13

14 General. The Agency may acquire goods or services through a noncompetitive open
15 enrollment solicitation and enter into enrollment contracts with qualified contractors.
16

- 17 (1) An open enrollment solicitation must be conducted in an open and fair manner
18 that reasonably provides interested, qualified contractors with an equal
19 opportunity to obtain a contract or do business with the Agency.
20
21 (2) The Agency may consider past performance when determining whether to
22 award a contract to an applicant.
23

24 **§858.3. General Requirements for Contracting.**
25

- 26 (a) To contract with the Agency for VR goods and services, the contractor must:
27
28 (1) ensure that:
29
30 (A) staff members meet all qualification requirements established by Agency
31 policy and regulations;
32
33 (B) all staff members meet minimum qualifications at application and
34 throughout the term of the contract;
35
36 (C) staff credentials supporting qualifications are on file at the time of hire
37 and maintained throughout the term of the contract; and
38
39 (D) staff credentials are made available to Agency staff upon request;
40
41 (2) provide for such fiscal control and fund accounting as may be necessary to
42 ensure proper disbursement and accounting of funds provided by the Agency
43 in accordance with Agency policies and maintain financial and other contract
44 records according to recognized fiscal and accounting practices such as the
45 Generally Accepted Accounting Principles (GAAP);
46

- 1 (3) certify on or before the effective date of the contract that the contractor has and
2 will maintain adequate operating funds for conducting business;
3
- 4 (4) have and maintain adequate staff to provide services on the effective date of the
5 contract;
6
- 7 (5) notify the Agency in writing of changes to contact information according to the
8 requirements of the contract. Unless otherwise specified in the contract, the
9 contractor must notify the Agency: :
- 10
- 11 (A) within 10 calendar days after any address change, including of the
12 location of the contractor's office, physical address, or mailing address;
13
- 14 (B) immediately of any change in administrator or director; and
15
- 16 (C) within seven working days of any change in the contact telephone
17 number designated in the contract;
18
- 19 (6) report any suspected violation of rules or laws to the appropriate investigative
20 authority. This includes reporting to the Agency any abuse, neglect, or
21 exploitation.
22
- 23 (b) A contractor may not offer, give, or agree to give an Agency employee anything of
24 value.
25
- 26 (c) A contractor or applicant may not engage in any activity that presents a real or
27 apparent conflict of interest and must provide written attestation that no real or
28 apparent conflicts of interest exist before execution of a contract with the Agency.
29
- 30 (d) Pursuant to Texas Government Code §572.054(b), certain Agency employees may not
31 represent or receive compensation from any individual concerning any contractual
32 matter in which the former employee participated during his or her employment with
33 the state.
34
- 35 (e) The Agency may choose not to enter into a contract:
36
- 37 (1) when, in the Agency's opinion, the contractor or a controlling party has a
38 documented, unsatisfactory history in contracting with the Agency or with
39 another state agency;
40
- 41 (2) if the contractor:
42
- 43 (A) subcontracts any direct care services without specific authorization from
44 the Agency ; and/or
45

1 (B) assigns or transfers the contract without the Agency's prior written
2 approval.
3

4 (f) The Agency may obtain criminal history information from the Texas Department of
5 Public Safety and may use this information in awarding and administering Agency
6 contracts. When the Agency uses the information, the terms and conditions of use are
7 included in the affected contracts.
8

9 (g) Goods or services purchased or reimbursed by the Agency may be inspected or
10 monitored at the discretion of the Agency.
11

12 (h) The Agency may require corrective action, remove or reassign active customers to
13 other contractors for services, and/or impose an adverse action against a contractor
14 for failure to comply with the terms of the contract and/or Agency rules, policies,
15 and procedures.
16

17 (i) A contractor shall participate in orientation relating to Agency contract requirements
18 before providing goods or services under a contract for the first time.

19 (j) A contractor shall ensure that any facility in which services are provided includes
20 individuals able to communicate in the native language of applicants, recipients of
21 service, and other eligible individuals who have limited English proficiency.
22

23 (k) Contractors shall take affirmative action to employ and advance in employment
24 qualified individuals with disabilities.
25

26 **§858.4. Complaints.**
27

28 Upon request from a customer, the contractor must provide the customer with the
29 appropriate name, mailing address, and telephone number to direct complaints to the
30 Agency. The contractor must verify that the name, mailing address, and telephone
31 number it provides to the customer are current and correct.
32

33 **§858.7. Contract Monitoring.**
34

35 (a) Any service purchased or reimbursed by the Agency may be monitored at the
36 discretion of the Agency.
37

38 (b) The Agency may conduct compliance monitoring reviews of the contractor's
39 services to determine if the contractor is in compliance with the contract and with
40 program rules and requirements. These reviews are conducted at the location where
41 the contractor is providing the services unless the Agency specifies a different
42 location. The Agency shall assess contractor performance based on contract
43 standards.
44

45 (c) The Agency may expand a compliance monitoring review period or any
46 requested review sample at any time.

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3 (d) The Agency may conduct a fiscal monitoring review:
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- 5 (1) in conjunction with a compliance monitoring review;
6
7 (2) independent of a compliance monitoring review;
8
9 (3) when a contract is terminated;
10
11 (4) as a result of a complaint; or
12
13 (5) at other times, as the Agency considers necessary.
14

15 (e) The Agency may use sampling methods in monitoring and auditing contracts.
16

17 (f) The contractor has the burden of proof in establishing entitlement to payments made
18 under the contract.
19

20 **§858.8. Corrective Action Plan.**
21

22 If requested by the Agency, the contractor shall prepare and implement a corrective
23 action plan to address and remedy all deficiencies or violations in a timely manner in
24 response to findings of deficiencies by the Agency or other federal or state oversight
25 authorities. The corrective action plan must be acceptable to the Agency. The
26 Agency may subsequently monitor and document the contractor's compliance with
27 the corrective action plan as accepted.
28

29 **§858.9. Adverse Actions.**
30

31 (a) The Agency may impose an adverse action when the contractor fails to follow the
32 terms of the contract or fails to comply with Agency rules, policies, and procedures.
33 The Agency may impose adverse actions for reasons including, but not limited to:
34

- 35 (1) the Agency's determination that one or more customers' health and safety has
36 been or is jeopardized;
37
38 (2) the contractor's failure to submit an acceptable written corrective action plan as
39 requested by the Agency or failure to comply with an accepted corrective
40 action plan;
41
42 (3) the contractor's failure to follow an agreed-upon audit resolution payment plan;
43
44 (4) the contractor's failure to submit an acceptable cost report, if applicable;
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46 (5) the contractor's failure to comply with the contract requirements;

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- (6) the contractor's failure to maintain a current required license or the contractor allowing the expiration of any required license, if applicable;
- (7) the contractor's relocation to a new facility address that does not have the appropriate license, if applicable;
- (8) the contractor's exclusion from contracting with the Agency or any health and human services program;
- (9) debarment or exclusion from a federal program;
- (10) a validated report or reports of abuse, neglect, or exploitation where an owner, employee, or volunteer who has direct access to customers is the perpetrator of, or enables, the abuse, neglect, or exploitation of a customer;
- (11) substantiated claims of fraud against a contractor; and
- (12) any other cause of so serious or compelling a nature that it affects the contractor's ability to perform under the contract or presents an imminent risk of harm to or liability for the Agency.

(b) The Agency may take the following adverse actions:

- (1) Recoup money that the contractor owes as a result of overpayments or other billing irregularities;
- (2) Place a vendor hold on one or all the contractor's contracts, which must be released when the Agency determines that the contractor has resolved the issue or issues causing the hold;
- (3) Deny all or part of a claim;
- (4) Direct the contractor to suspend or terminate a subcontractor's participation in the provision of goods or services;
- (5) Terminate a contract for cause before its expiration date;
- (6) Suspend the contractor's right to conduct business with the Agency;

- 1
2 (7) Debar the contractor's right to contract or conduct business with the Agency,
3 in any capacity, for a specified period of time; or
4
5 (8) Take any other less severe action or actions that the Agency determines
6 necessary to ensure the contractor's compliance with the underlying contract,
7 after considering the circumstances of a particular case.
8

9 **§858.10. Debarment and Suspension of Contractors.**
10

- 11 (a) Debarment and suspension apply to contracts.
12
13 (b) Debarment shall be imposed for a period commensurate with the seriousness of the
14 cause(s). Generally, debarment should not exceed three years, except for violations
15 of 41 USC Chapter 81 Drug Free Workplace. If a suspension precedes a debarment,
16 the suspension period shall be considered in determining the debarment period. The
17 Agency may extend the debarment for an additional period, if the Agency determines
18 that an extension is necessary to protect the Agency's interest. However, a debarment
19 may not be extended solely upon the facts and circumstances upon which the initial
20 debarment action was based. If debarment for an additional period is determined to
21 be necessary, the same procedures to impose an initial debarment shall be followed
22 to extend the debarment.
23
24 (c) A suspension is in effect until an investigation, hearing, or trial is concluded and the
25 Agency determines the contractor's future ability to contract or subcontract with the
26 Agency.
27
28 (d) The Agency may suspend a contractor's contract if the Agency suspects that grounds
29 may exist for debarment.
30
31 (e) For purposes of both debarment and suspension of a contract, the Agency may impute
32 the conduct of an individual even though the underlying conduct may have occurred
33 while the respondent was not associated with the contractor.
34

35 **§858.11. Causes and Conditions of Debarment.**
36

- 37 (a) The Agency may debar a contractor for reasons including the following:
38
39 (1) Being adjudicated as guilty, pleading guilty, pleading nolo contendere, or receiving a
40 deferred adjudication in a criminal court relating to:
41
42 (A) Obtaining, attempting to obtain, or performing a public or private
43 contract or subcontract;
44
45 (B) Engaging in embezzlement, theft, forgery, bribery, falsification or
46 destruction of records, fraud, receipt of stolen property, making false

- 1 statements or claims, tax evasion, or any other offense indicating moral
2 turpitude or a lack of business integrity or honesty;
3
- 4 (C) Use or possession of controlled or illegal substances, or other drug-
5 related offense;
6
- 7 (D) Violating federal antitrust statutes arising from submitting bids or
8 proposals;
9
- 10 (E) Committing an offense involving physical or sexual abuse or neglect; or
11
- 12 (F) Committing an offense involving the direct support or promotion of
13 human trafficking.
14
- 15 (2) Being debarred from contracting by any unit of the federal or state
16 government;
17
- 18 (3) Violating Agency contract provisions, including failing to perform according
19 to the terms, conditions, and specifications, or within the time specified, in an
20 Agency contract, including, but not limited to, the following:
21
- 22 (A) Failing to abide by applicable federal and state statutes, rules,
23 regulations, policies, and procedures, such as those regarding individuals
24 with disabilities and those regarding civil rights;
25
- 26 (B) Having a record of failure to perform or of unsatisfactory performance
27 according to the terms of one or more contracts or subcontracts, if that
28 failure or unsatisfactory performance has occurred within five years
29 preceding the determination to debar. Failure to perform and
30 unsatisfactory performance include, but are not limited to, the following:
31
- 32 (i) Failing to correct contract performance deficiencies after receiving
33 written notice about them from the Agency or its authorized agents;
34
- 35 (ii) Failing to repay or make and complete arrangements satisfactory to
36 the Agency to repay identified overpayments or other erroneous
37 payments, or assessed liquidated damages or penalties;
38
- 39 (iii) Failing to meet standards that are required for licensure or
40 certification, or that are required by state or federal law, Agency
41 rules, or Agency policy concerning contractors;
42
- 43 (iv) Failing to execute contract amendments required by the Agency;
44

- 1 (v) Billing for services or goods not provided to the customer;
2
3 (vi) Submitting a false report or misrepresentation that, if used, may
4 increase individual or statewide rates or fees;
5
6 (vii) Charging customers fees contrary to Agency rules or policy;
7
8 (viii) Failing to notify and reimburse the Agency or its agents for
9 services that the Agency paid for when the contractor received
10 reimbursement from a liable third party;
11
12 (ix) Failing to disclose or make available, upon demand, to the Agency
13 or its representatives (including appropriate federal and state
14 agencies) records that the contractor is required to maintain;
15
16 (x) Failing to provide and maintain services within standards required by
17 statute, regulations, or contract; or
18
19 (xi) Violating the Texas Human Resources, Government, or Labor Code
20 provisions applicable to the contractor or any rule or regulation
21 issued under the referenced Codes;
22
23 (4) Submitting an offer, bid, proposal, or application that contains a false
24 statement or misrepresentation or omits pertinent facts or documents that are
25 material to the procurement;
26
27 (5) Engaging in an abusive or neglectful practice that results in or could result in
28 death or injury to the customer served by the contractor;
29
30 (6) Knowingly and willfully using a debarred individual as an employee,
31 independent contractor, or agent associated with any service provided in
32 performance of a contract with the Agency;
33
34 (7) Failure to pay a substantial debt or debts, including disallowed costs and
35 overpayments, owed to any federal or state agency instrumentality, provided
36 the debt is uncontested by the debtor or, if contested, provided that the debtor's
37 legal and administrative remedies have been exhausted; or
38
39 (8) Any other cause of a serious or compelling nature that affects a contractor's
40 present or future ability to perform under the contract or that presents an
41 imminent risk of harm to or liability for the Agency;
42
43 (b) In accordance with terms specified by the Agency, an individual that has been
44 debarred may not:
45
46 (1) receive a contract;

- 1
- 2 (2) be allowed to retain a contract that has been awarded before debarment;
- 3
- 4 (3) participate as a vendor in Agency programs that do not require the individual
- 5 to sign a contract or agreement;
- 6
- 7 (4) provide goods or services to Agency customers either directly or indirectly
- 8 while working for an Agency contractor; or
- 9
- 10 (5) either directly or through an intermediary, bill to or receive payment from the
- 11 Agency for any services or supplies provided by the debarred individual on or
- 12 after the effective date of the debarment. The Agency will not pay for any
- 13 services ordered, prescribed, or delivered by the debarred individual to Agency
- 14 customers after the date of debarment. No costs associated with a debarred
- 15 individual, including the salary, fringe benefits, overhead, payments to, or any
- 16 other costs associated with an individual who was debarred may be included in
- 17 an Agency cost report or any other document that will be used to determine an
- 18 individual payment rate, a statewide payment rate, or a fee. Nothing in this
- 19 provision shall be construed in a manner that would prevent a debarred
- 20 individual, who is also a VR customer, from receiving VR services as a VR
- 21 customer.

22

23 (c) A single occurrence of a violation may result in debarment or suspension.

24

25 **§858.12. Causes and Results of Suspension.**

26

- 27 (a) The Agency may suspend a contract whenever grounds for debarment exist.
- 28
- 29 (b) Suspension will result in one or more of the following:
 - 30
 - 31 (1) The Agency may withhold payments, wholly or partly, to the contractor
 - 32 during the period of suspension.
 - 33
 - 34 (2) The Agency may refuse to accept a bid, offer, application, or proposal
 - 35 from, or to award a contract to, the affected contractor during the period
 - 36 of suspension.
 - 37
 - 38 (3) The Agency may remove existing customers referred from or cease
 - 39 referring customers to a suspended contractor and may transfer existing
 - 40 customers to other contractors.
 - 41
- 42 (c) If the Agency determines that the underlying reasons for suspension have been
- 43 resolved in favor of the respondent, the Agency must, if applicable:
 - 44
 - 45 (1) pay the withheld payments for services that were provided during the
 - 46 suspension and that met the terms of an existing contract; and

- 1
2 (2) resume contract payments and customer referrals.
3
4 (d) If the Agency determines that the underlying reasons for suspension are not resolved
5 in favor of the respondent, the Agency shall institute debarment proceedings.
6
7 (e) In accordance with terms specified by the Agency, an individual whose contract has
8 been placed in suspension may not:
9
10 (1) receive a contract;
11
12 (2) submit an offer, bid, application, or proposal for a contract; or
13
14 (3) provide goods or services to Agency customers either directly or indirectly
15 while working for an Agency contractor.
16
17 (f) A suspension may be applied against an individual, an entire legal entity, or a
18 specified part of a legal entity.
19

20 **§858.13. Evidence for Debarment.**

21
22 In making a debarment decision, the Agency may consider the following factors:

- 23
24 (1) The actual or potential harm or impact that results or may result from the
25 wrongdoing.
26
27 (2) The frequency of incidents and/or duration of the wrongdoing.
28
29 (3) Whether there is a pattern or history of wrongdoing.
30
31 (4) Whether an individual is or has been disqualified by an agency of the federal
32 government or has not been allowed to participate in state or local contracts or
33 assistance agreements based on conduct similar to one or more of the causes
34 for debarment specified in this part.
35
36 (5) Whether and to what extent the individual planned, initiated, or carried out the
37 wrongdoing.
38
39 (6) Whether the individual accepted responsibility for the wrongdoing and
40 recognized the seriousness of the misconduct that led to the cause for
41 debarment.
42
43 (7) Whether the individual paid or agreed to pay all criminal, civil, and
44 administrative liabilities for the improper activity, including any investigative
45 or administrative costs incurred by the government, and has made or agreed to
46 make full restitution.

- 1
2 (8) Whether the individual cooperated fully with the government agencies during
3 the investigation and with any court or administrative action. In determining
4 the extent of cooperation, the Agency may consider when the cooperation
5 began and whether the individual disclosed all pertinent information known to
6 the individual.
7
8 (9) Whether the wrongdoing was pervasive within the individual's organization.
9
10 (10) The types of positions held by the individuals involved in the wrongdoing.
11
12 (11) Whether the individual's organization took appropriate corrective action or
13 remedial measures.
14
15 (12) Whether the individual's principals tolerated the offense.
16
17 (13) Whether the individual brought the activity cited as a basis for the debarment
18 to the attention of the appropriate Agency representative in a timely manner.
19
20 (14) Whether the individual fully investigated the circumstances surrounding the
21 cause for debarment and, if so, made the result of the investigation available to
22 the Agency.
23
24 (15) Whether the individual had effective standards of conduct and internal control
25 systems in place at the time the questioned conduct occurred.
26
27 (16) Whether the individual took appropriate disciplinary action against the
28 individuals responsible for the activity that constitutes the cause for debarment.
29
30 (17) Whether the individual had adequate time to eliminate the circumstances
31 within the individual's organization that led to the cause for the debarment.
32
33 (18) Other factors related to the contractor's required performance under the
34 contract that the Agency determines are appropriate to the circumstances of a
35 particular case.
36

37 **§858.14. Notice for Debarment or Suspension.**
38

39 Written notices of suspension or debarment must include the following, as applicable:
40

- 41 (1) the grounds for the action;
42
43 (2) the length of the debarment;
44
45 (3) the conditions that might cause a suspension to be released;
46

- 1 (4) a statement explaining the effect of the suspension or debarment; and
- 2
- 3 (5) a statement as to whether the suspension or debarment is in effect for all
- 4 Agency contracts or just for a particular Agency contract.
- 5

6 **§858.15. Appeals.**

- 7
- 8 (a) A contractor may appeal an initial adverse action rendered by the Agency under
- 9 §858.9 of this chapter by hand delivery, mail, common carrier, facsimile (fax)
- 10 transmission, or other method approved by the Agency in writing. A contractor shall
- 11 only submit an appeal by hand delivery, mail, or common carrier to the Agency as
- 12 directed on the Contractor Notice of Appeal Rights (VR 1309). An appeal sent by
- 13 unapproved methods or to a different address will not be considered by the Agency
- 14 as a valid appeal.
- 15
- 16 (b) The Agency's initial adverse action is final for all purposes unless the contractor
- 17 files an appeal not later than 28 calendar days after the date on which the initial
- 18 adverse action is mailed, sent by electronic mail, or sent by facsimile to the
- 19 contractor. The timeliness of an appeal is subject to the rules and procedures set out
- 20 in the Unemployment Insurance rules at 40 TAC Chapter 815, except to the extent
- 21 that such sections are clearly inapplicable or contrary to provisions set out under
- 22 these Chapter 858 rules or the contract between the parties.
- 23
- 24 (c) To be considered, the appeal must include the following:
- 25
- 26 (1) A statement of facts describing how an Agency decision, action, or inaction
- 27 deviated from contract terms, published policy, or state or federal laws or
- 28 regulations;
- 29
- 30 (2) The contractor's claim, including pertinent contract sections;
- 31
- 32 (3) A statement of the issue or issues in dispute;
- 33
- 34 (4) A brief statement about why the Agency's initial adverse action is wrong;
- 35
- 36 (5) Copies of evidence or documentation supporting the appeal; and
- 37
- 38 (6) The action requested.
- 39
- 40 (d) The contractor may supplement its appeal after being perfected but before the
- 41 Agency rendering a decision on the merits.
- 42
- 43 (e) As part of the appeal, the contractor may also request a meeting with the Agency.
- 44 Whether a meeting will be granted is at the Agency's discretion. The meeting request
- 45 should include a description of any special accommodations needed for the
- 46 contractor, witnesses, or representatives. At the meeting, the contractor may:

- (1) be represented by an individual of the contractor's selection; and
- (2) present evidence and information to support the contractor's position.

(f) The Agency will notify the contractor whether its appeal has been perfected and has met the requirements in subsection (c) of this section for consideration on its merits. If the appeal does not meet the requirements, the appeal will be denied, and the initial adverse action will be the Agency's final decision.

(g) An Agency appeal decision becomes final 14 days after the date the appeal decision is mailed, unless the contractor files a written request for reconsideration before that date.

§858.16. Request for Reconsideration.

(a) The contractor may submit a request for reconsideration following the Agency's issuance of the appeal decision by hand delivery, mail, common carrier, facsimile (fax) transmission, or other method approved by the Agency in writing:

(1) A request for reconsideration shall only be hand delivered, mailed, or sent by common carrier to the Agency as directed on the Contractor Notice of Rights (VR 1309). A request for reconsideration sent by unapproved methods or to a different address will not be considered a valid request for reconsideration by the Agency.

(2) The timeliness of a request for reconsideration is subject to the rules and procedures set out in the Unemployment Insurance rules at Chapter 815 of this title, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under these Chapter 858 rules or the contract between the parties.

(b) A request for reconsideration shall not be granted unless each of the following three criteria are met:

(1) there is an offering of new evidence, which was not presented as part of the original appeal pursuant to §858.15 of this chapter;

(2) there is a compelling reason why the evidence was not presented earlier; and

(3) there is a specific explanation of how consideration of the evidence would change the outcome of the decision.(c) The Agency's decision on the request for reconsideration is the final decision of the Agency.