

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

4
5 **PROPOSED 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 FEBRUARY 4, 2020, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**
10 **RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

11
12 Estimated Publication Date of the Proposal in the *Texas Register*: **February 21, 2020**
13 Estimated End of Comment Period: **March 23, 2020**
14

15 The Texas Workforce Commission (TWC) proposes the following new sections to Chapter 858,
16 relating to Vocational Rehabilitation Services Contract Management Requirement:

17
18 §858.1 and §858.2
19

20 TWC proposes amendments to the following sections of Chapter 858, relating to Vocational
21 Rehabilitation Services Contract Management Requirement:

22
23 §§858.3, 858.4, and §858.7 - 858.16
24

25 TWC proposes the repeal of the following sections of Chapter 858, relating to Vocational
26 Rehabilitation Services Contract Management Requirement:

27
28 §§858.1, 858.2, 858.5, and 858.6
29

- 30 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
31 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
32 PART III. IMPACT STATEMENTS
33 PART IV. COORDINATION ACTIVITIES
34

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

36 The purpose of the proposed Chapter 858 rule change is to align the chapter with TWC's
37 operation of the Vocational Rehabilitation (VR) services program. Texas Labor Code §351.002
38 transferred the administration of VR services from the Texas Department of Assistive and
39 Rehabilitative 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2 are needed to integrate and align overlapping sections and update outdated terms and procedures to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 **TWC proposes the following amendments to Chapter 858:**

19 20 **§858.1. Purpose and Applicability**

21 Section 858.1 is repealed because the language on purpose and applicability is unnecessary and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

24 **§858.1. Definitions**

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

28 **§858.2. Definitions**

29 Section 858.2 is repealed to accommodate reorganization of the subchapter.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

31 **§858.2. Noncompetitive Open Enrollment Solicitation**

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

35 **§858.3. General Requirements for Contracting**

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

40 **§858.4. Complaints**

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

1
2 **§858.14. Notice for Debarment or Suspension**

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

5
6 **§858.15. Appeals**

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

13
14 **§858.16. Request for Reconsideration**

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

17
18 **PART III. IMPACT STATEMENTS**

19 Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the
20 rules will be in effect, the following statements will apply:

21
22 There are no additional estimated costs to the state and to local governments expected as a result
23 of enforcing or administering the rules.

24
25 There are no estimated cost reductions to the state and to local governments as a result of
26 enforcing or administering the rules.

27
28 There are no estimated losses or increases in revenue to the state or to local governments as a
29 result of enforcing or administering the rules.

30
31 There are no foreseeable implications relating to costs or revenue of the state or local
32 governments as a result of enforcing or administering the rules.

33
34 There are no anticipated economic costs to individuals required to comply with the rules.

35
36 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
37 communities as a result of enforcing or administering the rules.

38
39 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
40 that the requirement to repeal or amend a rule, as set forth by Texas Government Code
41 §2001.0045, does not apply to this rulemaking. Additionally, Texas Labor Code §352.101
42 requires TWC's three-member Commission (Commission) to adopt rules necessary to integrate
43 the VR programs, including recommending adopting rules to implement the integration.
44 Therefore, the exception identified in §2001.0045(c)(9) also applies.

45
46 **Takings Impact Assessment**

1 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
2 affects private real property, in whole or in part or temporarily or permanently, in a manner that
3 requires the governmental entity to compensate the private real property owner as provided by
4 the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or
5 §19, Article I; or an action that restricts or limits the owner's right to the property that would
6 otherwise exist in the absence of the governmental action, and is the producing cause of a
7 reduction of at least 25 percent in the market value of the affected private real property,
8 determined by comparing the market value of the property as if the governmental action is not in
9 effect with the market value of the property as if the governmental action is in effect. The
10 Commission completed a Takings Impact Analysis for the proposed rulemaking action under
11 Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as
12 discussed elsewhere in this preamble, is to align Chapter 858 with TWC's operation of the VR
13 services program.

14
15 The proposed rulemaking action will not create any additional burden on private real property.
16 The proposed rulemaking action will not affect private real property in a manner that would
17 require compensation to private real property owners under the US Constitution or the Texas
18 Constitution. The proposed rulemaking also will not affect private real property in a manner that
19 restricts or limits an owner's right to the property that would otherwise exist in the absence of the
20 governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas
21 Government Code, Chapter 2007.

22 23 Government Growth Impact Statement

24 TWC has determined that during the first five years the proposed amendments will be in effect:
25 --the proposed amendments will not create or eliminate a government program;
26 --implementation of the proposed amendments will not require the creation or elimination of
27 employee positions;
28 --implementation of the proposed amendments will not require an increase or decrease in future
29 legislative appropriations to TWC;
30 --the proposed amendments will not require an increase or decrease in fees paid to TWC;
31 --the proposed amendments will not create a new regulation;
32 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
33 --the proposed amendments will not change the number of individuals subject to the rules; and
34 --the proposed amendments will not positively or adversely affect the state's economy.

35 36 Economic Impact Statement and Regulatory Flexibility Analysis

37 TWC has determined that the proposed rules will not have an adverse economic impact on small
38 businesses or rural communities, as these proposed rules place no requirements on small
39 businesses or rural communities.

40
41 Mariana Vega, Director, Labor Market and Career Information, has determined that there is no
42 significant negative impact upon employment conditions in the state as a result of the rules.

43
44 Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each year of
45 the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the
46 proposed rules will be to update outdated terms and procedures to align with TWC's current VR

1 services program operation; to ensure the health and safety of VR customers; and to help ensure
2 that Texans receive the best value for the expenditure of available public funds for VR services.
3

4 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
5 within TWC's legal authority to adopt.
6

7 **PART IV. COORDINATION ACTIVITIES**

8 In the development of these rules for publication and public comment, TWC sought the
9 involvement of the 28 Local Workforce Development Boards (Boards) in Texas. TWC provided
10 the concept paper regarding these rule amendments to the Boards for consideration and review
11 on June 14, 2018. TWC also conducted a conference call with Board executive directors and
12 Board staff on June 22, 2018, to discuss the concept paper. During the rulemaking process, TWC
13 considered all information gathered in order to develop rules that provide clear and concise
14 direction to all parties involved.
15

16 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
17 Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas
18 78778; faxed to (512) 475-3577; or emailed to TWCPolicyComments@twc.state.tx.us.
19 Comments must be received or postmarked no later than 30 days from the date this proposal is
20 published in the *Texas Register*.
21

22 The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide
23 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
24 effective administration of TWC services and activities.
25

26 The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301, 302, 351, and
27 352.
28

1 **CHAPTER 858. PROCUREMENT AND CONTRACT MANAGEMENT REQUIREMENTS**
2 **FOR PURCHASE OF GOODS AND SERVICES FOR VOCATIONAL**
3 **REHABILITATION SERVICES ~~VOCATIONAL REHABILITATION SERVICES~~**
4 **CONTRACT MANAGEMENT REQUIREMENT**
5

6 **~~SUBCHAPTER D. VOCATIONAL REHABILITATION SERVICES CONTRACT~~**
7 **~~MANAGEMENT REQUIREMENT~~**
8
9

10 **~~§858.1. Purpose and Applicability.~~**
11

12 ~~The purpose of this subchapter is to establish general contracting rules for consumer~~
13 ~~goods and services contracts with the Texas Department of Assistive and Rehabilitative~~
14 ~~Services (DARS).~~
15

16 **~~§858.2. Definitions.~~**
17

18 ~~The following words and terms, when used in this subchapter have the following~~
19 ~~meanings, unless the context clearly indicates otherwise.~~
20

21 ~~(1) Amendment—A formal revision or addition to a contract.~~
22

23 ~~(2) Bid—An offer to contract with the state submitted in response to a bid~~
24 ~~invitation.~~
25

26 ~~(3) Commissioner—The Chief Executive Officer of the Texas Department of~~
27 ~~Assistive and Rehabilitative Services.~~
28

29 ~~(4) Contract—A promise, or a set of promises, for breach of which the law gives a~~
30 ~~remedy, or the performance of which the law in some way recognizes as a~~
31 ~~duty. It is an agreement between two or more parties creating obligations that~~
32 ~~are enforceable or otherwise recognizable at law. The term also encompasses~~
33 ~~the written document that describes the terms of the agreement. For state~~
34 ~~contracting purposes, it generally describes the terms of a purchase of goods or~~
35 ~~services from a vendor or service contractor; however, the term also~~
36 ~~encompasses grant arrangements.~~
37

38 ~~(5) Contract Assignment—The transfer of contractual rights held by one party to~~
39 ~~another party.~~
40

41 ~~(6) Contractor—An entity or person holding a written agreement with a purchasing~~
42 ~~entity to provide goods and services; or a recipient or sub-recipient holding a~~
43 ~~written agreement with a grantor or sub-recipient to carry out all or part of a~~
44 ~~program.~~
45

- 1 ~~(7) Contract records—All financial and programmatic records, supporting~~
2 ~~documents, papers, statistical data, or any other written or electronic materials~~
3 ~~that are pertinent to each specific contract instrument.~~
- 4
- 5 ~~(8) Corrective action plan—Specific steps to be taken by a contractor to resolve~~
6 ~~identified deficiencies and/or to address concerns that the contracting agency~~
7 ~~has regarding the contractor's compliance with contract terms or other~~
8 ~~applicable laws, rules, or regulations. The corrective action plan may also~~
9 ~~focus on improving contractor performance (as it relates to service delivery,~~
10 ~~reporting, and/or financial stability).~~
- 11
- 12 ~~(9) DARS—The Texas Department of Assistive and Rehabilitative Services.~~
- 13
- 14 ~~(10) DARS policies—For the purposes of this chapter only, the standards that DARS~~
15 ~~provides to contractors that stipulate performance expectations for contractors~~
16 ~~to provide goods or services under the contract.~~
- 17
- 18 ~~(11) Effective date—The date of complete execution of the contract or the date upon~~
19 ~~which the parties agree the contract takes effect.~~
- 20
- 21 ~~(12) Entity—An association, organization, governmental or business body, or~~
22 ~~existing body or class of persons that is chartered or organized for representing~~
23 ~~the interest of persons.~~
- 24
- 25 ~~(13) Grant—An award of financial assistance, including cooperative agreements, in~~
26 ~~the form of money, property in lieu of money, or other financial assistance paid~~
27 ~~or furnished by the state or federal government to an eligible grantee to carry~~
28 ~~out a program in accordance with rules, regulations, and guidance provided by~~
29 ~~the grantor agency.~~
- 30
- 31 ~~(14) Memorandum of Understanding (MOU)—A written document evidencing the~~
32 ~~understanding or agreement of two or more parties regarding the subject matter~~
33 ~~of the agreement. Because the underlying agreement may or may not be legally~~
34 ~~binding and enforceable in and of itself, a memorandum of understanding may~~
35 ~~or may not constitute a contract. It is generally considered a less formal way of~~
36 ~~evidencing an agreement, and is ordinarily used in state government only~~
37 ~~between or among state agencies or other government entities. The term is~~
38 ~~used interchangeably with "memorandum of agreement."~~
- 39
- 40 ~~(15) Program—DARS activities designed to deliver services or benefits provided by~~
41 ~~statute.~~
- 42
- 43 ~~(16) Subcontract—A written agreement between the original contractor and a third~~
44 ~~party to provide all or a specified part of the goods, services, work, and/or~~
45 ~~materials required in the original contract.~~
- 46

1 §858.1 Definitions.

2
3 In addition to the definitions contained in §800.2 of this title, the following words and
4 terms, when used in this chapter, have the following meanings, unless the context clearly
5 indicates otherwise.

6
7 (1) Amendment--A formal revision or addition to a contract.

8
9 (2) Bid--An offer to contract with the state submitted in response to a bid
10 invitation.

11
12 (3) Contract--A written agreement between the Agency and a contractor by the
13 terms of which the contractor agrees to provide goods or services, by sale or
14 lease to or for the Agency for Vocational Rehabilitation (VR) customers.

15
16 (4) Contract records--All financial and programmatic records, supporting
17 documents, papers, statistical data, or any other written or electronic materials
18 that are pertinent to each specific contract instrument.

19
20 (5) Contractor--An individual holding a written contract.

21
22 (6) Corrective action plan--Specific steps to be taken by a contractor to resolve
23 identified deficiencies and/or to address concerns that the contracting agency
24 has regarding the contractor's compliance with contract terms or other
25 applicable laws, rules, or regulations. The corrective action plan may also
26 focus on improving contractor performance (as it relates to service delivery,
27 reporting, and/or financial stability).

28
29 (7) Debarment--The termination of the ability to continue an existing contract, to
30 receive a new contract, to participate as a contractor or subcontractor, to
31 provide goods or services to Agency Vocational Rehabilitation (VR) customers
32 either directly or indirectly while working for an Agency contractor, or to
33 make a bid, offer, application, or proposal for an Agency contract.

34
35 (8) Effective date--The date of complete execution of the contract or the date upon
36 which the parties agree that the contract takes effect.

37
38 (9) Individual--Any individual, corporation, partnership, association, unit of
39 government, or legal entity, however organized, or any portion thereof.

40
41 (10) Program--Agency activities that are designed to deliver services or benefits
42 provided by statute.

43
44 (11) Respondent--An individual against whom the Agency has initiated a
45 debarment or suspension action.

1 (12) Subcontract--A written agreement between the original contractor and a third
2 party to provide all or a specified part of the goods, services, work, and/or
3 materials required in the original contract.

4
5 (13) Suspension--The temporary discontinuance of a contractor's authorization to
6 conduct business with the Agency.

7
8 **§858.2. Noncompetitive Open Enrollment Solicitation.**

9
10 General. The Agency may acquire goods or services through a noncompetitive open
11 enrollment solicitation and enter into enrollment contracts with qualified contractors.

12
13 (1) An open enrollment solicitation must be conducted in an open and fair manner
14 that reasonably provides interested, qualified contractors with an equal
15 opportunity to obtain a contract or do business with the Agency.

16
17 (2) The Agency may consider past performance when determining whether to
18 award a contract to an applicant.

19
20 **§858.3. General Requirements for Contracting.**

21
22 (a) To contract with ~~DARS~~the Agency for VR goods and services, the contractor must:

23
24 ~~(1) — meet eligibility requirements for contracting;~~

25
26 ~~(2) — if applicable, have and maintain the appropriate license(s);~~

27
28 ~~(3) — submit all documents and information required by DARS;~~

29
30 ~~(4) — comply with all applicable DARS and Texas Health and Human Services Commission~~
31 ~~rules and policies and terms of the contract with DARS;~~

32
33 ~~(5) — comply with all local, state, and federal regulations that apply to the contract;~~

34
35 ~~(6) — be authorized by law or the Secretary of State to conduct business in the state of Texas;~~

36
37 ~~(7) — certify in writing that the contractor's taxes due to the state of Texas are current;~~

38
39 (1)(8) ensure that:

40
41 (A) staff members providing services are competent, professionally ethical,
42 and qualified for positions held. Qualifications of staff members must
43 meet all qualification requirements established by state Agency policy
44 and regulations; ~~The contractor must ensure that~~
45

1 (B) all staff members meet minimum qualifications; at application and
2 throughout the term of the contract;

3
4 (C) staff credentials supporting ~~those~~ qualifications must be on file at the
5 time of hire and maintained throughout the term of the contract; and

6
7 (D) staff credentials must be made available to DARS Agency staff
8 ~~members~~ upon request;
9

10
11 (2)(9) provide for such fiscal control and fund accounting as may be necessary to
12 ensure proper disbursement and accounting of funds provided by DARS the
13 Agency and in accordance with DARS Agency policies; and maintain financial
14 and other contract records according to recognized fiscal and accounting
15 practices such as the Generally Accepted Accounting Principles (GAAP);
16

17
18 (3)(10) ~~maintain accurate and complete records and prepare and distribute reports~~
19 ~~according to~~ certify on or before the ~~terms~~ effective date of the contract that the
20 contractor has and will maintain adequate operating funds for conducting
21 business;
22

23 (11) ~~ensure that any contractor facility in which services are provided is:~~

24
25 (A) ~~such that the safety and health of the staff and consumers is protected;~~
26 ~~and~~

27
28 (B) ~~accessible to individuals receiving services and complies with the~~
29 ~~requirements of the Architectural Barriers Act of 1968, the Uniform~~
30 ~~Federal Accessibility Standards, the Americans with Disabilities Act of~~
31 ~~1990, and Section 504 of the Rehabilitation Act;~~
32

33 (12) ~~have adequate operating funds available for conducting business on the~~
34 ~~effective date of the contract;~~
35

36 (4)(13) have ~~an~~ and maintain adequate staff to provide services on the effective date
37 of the contract;
38

39 (5)(14) notify ~~DARS and HHSC~~ the Agency in writing of changes to ~~contract~~ contact
40 information according to the requirements of the contract. Unless otherwise
41 specified in the contract, the contractor must notify ~~DARS and HHSC~~ the
42 Agency;
43

44 (A) within 10 calendar days after any address change, including of the
45 location of the contractor's office, physical address, or mailing address;
46

- 1 (B) immediately of any change in administrator or director; and
2
3 (C) within seven working days of any change in the contact telephone
4 number designated in the contract; ~~and~~

5
6 ~~(6)(15)~~ report any suspected violation of rules or laws to the appropriate
7 investigative authority. This includes reporting ~~abuse, neglect, and exploitation~~
8 ~~issues to the Texas Department of Family and Protective Services (DFPS) or to~~
9 ~~the appropriate Texas Department of Aging and Disability Services (DADS)~~
10 ~~licensing staff~~ to the Agency any abuse, neglect, or exploitation.

11
12 ~~(b) To provide services, a contractor must maintain adequate:~~

13
14 ~~(1) funding for provision of services; and~~

15
16 ~~(2) staff for the provision of services.~~

17
18 ~~(b)(e)~~ A contractor ~~or potential contractor~~ may not offer, give, or agree to give ~~a DARS~~ an
19 Agency employee anything of value.

20
21 ~~(c)(d)~~ A contractor or ~~potential contractor~~ applicant may not engage in any activity that
22 presents a real or apparent conflict of interest and must provide written attestation
23 that no real or apparent conflicts of interest exist before execution of a contract with
24 the Agency.

25
26 ~~(d)(e)~~ Pursuant to Texas Government Code §572.054(b), certain Agency employees ~~A~~
27 ~~former DARS employee~~ may not represent or receive compensation from any
28 ~~person~~ individual concerning any contractual matter in which the former employee
29 participated during his or her employment with the state.

30
31 ~~(e)(f)~~ The Agency ~~DARS~~ may choose not to enter into a contract:

32
33 (1) when, in ~~DARS~~ the Agency's opinion, the contractor, ~~potential contractor~~, or a
34 controlling party has a documented, unsatisfactory history in contracting with
35 ~~DARS~~ the Agency or with another ~~health and human services~~ state agency;

36
37 (2) if the contractor ~~or potential contractor~~:

38
39 (A) subcontracts any direct care services without specific authorization from
40 ~~DARS and HHSC~~ the Agency; and/or

41
42 (B) assigns or transfers the contract without the Agency's prior written
43 approval ~~of DARS and HHSC~~.

44
45 (f) The Agency may obtain criminal history information from the Texas Department of
46 Public Safety and may use this information in awarding and administering Agency

1 contracts. When the Agency uses the information, the terms and conditions of use are
2 included in the affected contracts

3
4 (g) ~~DARS or HHSC assigns the effective date of a contract.~~ Goods or services purchased
5 or reimbursed by the Agency may be inspected or monitored at the discretion of the
6 Agency.

7
8 ~~(h) Goods or services purchased or reimbursed by DARS may be inspected or~~
9 ~~monitored at the discretion of DARS or HHSC.~~

10
11
12 ~~(h)(i) DARS or HHSC~~ The Agency may require corrective action, ~~suspend consumer~~
13 ~~referrals, remove or reassign active customers to other contractors for services~~ and/or
14 impose an adverse action against a contractor for failure to comply with the terms of
15 the contract and/or ~~DARS or HHSC~~ Agency rules, policies, and procedures.

16
17 ~~(i)(j)~~ A contractor must participate in orientation relating to ~~DARS and HHSC~~ Agency
18 contract requirements before providing goods or services under a contract for the
19 first time.

20
21 ~~(j)(k)~~ A contractor shall ensure that any facility in which services are provided includes
22 ~~among the staff members, or shall obtain the services of, people~~ individuals able to
23 communicate in the native language of applicants ~~and consumers, recipients of~~
24 service, and other eligible individuals who have limited English ~~speaking ability and~~
25 ~~ensure that appropriate modes of communication are used for all~~
26 ~~consumers.~~ proficiency.

27
28 ~~(k)(l)~~ Contractors ~~that provide vocational rehabilitation services~~ shall take affirmative
29 action to employ and advance in employment qualified individuals with disabilities.

30 31 **§858.4. Complaints.**

32
33 Upon request from ~~the consumer~~ a customer, the contractor must ~~notify~~ provide the
34 ~~consumer of~~ customer with the appropriate name, mailing address, and telephone number
35 ~~of DARS for the purpose of directing to direct~~ complaints to the Agency. The contractor
36 must verify that the name, mailing address, and telephone number it provides to the
37 customer are current and correct.

38 39 **~~§858.5. Record Requirements.~~**

40
41 ~~(a) The contractor must maintain all financial and contract related records:~~

42
43 ~~(1) according to recognized fiscal and accounting practices such as Generally~~
44 ~~Accepted Accounting Principles (GAAP); and~~

1 ~~(2) in accordance with the DARS or HHSC contract requirements, rules, policies~~
2 ~~and procedures.~~

3
4 ~~(b) When required by DARS or HHSC, the contractor must use the official DARS form~~
5 ~~to document services delivered.~~

6
7 ~~(c) The contractor must maintain all records about the services provided to individuals in~~
8 ~~programs administered by DARS as required under each contract from the date the~~
9 ~~services were provided. If litigation or claim involving these records is still ongoing~~
10 ~~at the conclusion of the required time the contract specifies to maintain the records,~~
11 ~~the contractor must maintain the records until all litigation or claims are resolved.~~

12
13 ~~(d) The contractor must maintain all work papers and records supporting information~~
14 ~~reported on cost reports, budgets, or other cost surveys for the duration stated in the~~
15 ~~contract after the end of the fiscal year in which the services were provided. If~~
16 ~~litigation or claim involving these records is still ongoing at the conclusion of the~~
17 ~~required time the contract specifies to maintain the records, the contractor must~~
18 ~~maintain the records until all litigation or claims are resolved.~~

19
20 **~~§858.6. Access to Contractor Facilities and Records.~~**

21
22 ~~(a) Contractors must allow DARS and HHSC and all appropriate federal and state~~
23 ~~agencies or their representatives access to contractor facilities to examine and copy~~
24 ~~contract records and supporting documents about services provided. The contractors~~
25 ~~and subcontractors must make the records available at reasonable times and for~~
26 ~~reasonable periods.~~

27
28 ~~(b) If a contractor is terminating business operations, the contractor must ensure that:~~

29 ~~(1) records are stored and accessible; and~~

30 ~~(2) someone is responsible for adequately maintaining the records.~~

31
32
33
34 **§858.7. Contract Monitoring.**

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

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

1 (c) The Agency may expand a compliance monitoring review period or any requested
2 review sample at any time. ~~During the monitoring review, the contractor must~~
3 ~~provide:~~

4
5 ~~(1) adequate working space for reviewing the records;~~

6
7 ~~(2) every record DARS or HHSC requests for review; and~~

8
9 ~~(3) copies, or access for DARS and HHSC staff to make needed copies, of~~
10 ~~documents.~~

11
12 ~~(d) During the monitoring review, DARS or HHSC may:~~

13
14 ~~(1) review a sample of consumer records to determine the contractor's compliance~~
15 ~~with contract requirements;~~

16
17 ~~(2) interview consumers and staff members;~~

18
19 ~~(3) observe consumers and staff members;~~

20
21 ~~(4) consult with others, as appropriate; and~~

22
23 ~~(5) conduct other activities, as appropriate.~~

24
25 ~~(e) DARS or HHSC may expand a compliance monitoring review period or the review~~
26 ~~sample at any time.~~

27
28 ~~(f) DARS and HHSC also conduct fiscal monitoring, which is the review of~~
29 ~~documentation that supports the contractor's billing, as it exists at the time the DARS~~
30 ~~or HHSC staff reviews the billing documentation. DARS or HHSC may recoup~~
31 ~~payment if the service delivery documentation does not support the contractor's~~
32 ~~billing.~~

33
34 ~~(g)~~ The Agency ~~DARS and HHSC~~ may conduct a fiscal monitoring review:

35 (1) in conjunction with a compliance monitoring review;

36 (2) independent of a compliance monitoring review;

37 (3) when a contract is terminated;

38 (4) as a result of a complaint; or

39 (5) at other times, as the Agency ~~as DARS or HHSC~~ considers necessary.

40
41
42
43
44
45 ~~(h) Fiscal monitoring is designed to ensure that:~~
46

1 ~~(1) DARS received the goods or services paid for;~~

2
3 ~~(2) The total amount paid by DARS was allowable under the contract; and~~

4
5 ~~(3) The contractor maintained the financial records and internal controls necessary~~
6 ~~to adequately account for claims under the contract.~~

7
8 (e)(i) ~~The DARS and HHSC~~ Agency may use sampling methods in monitoring and
9 auditing contracts.

10
11 (f)(i) The ~~contractor~~ contractor has the burden of proof in establishing entitlement to
12 payments made under the contract.

13
14 ~~(k) The contractor must provide the same accommodations for fiscal monitoring as~~
15 ~~related to compliance monitoring.~~

16
17 **§858.8. Corrective Action Plan.**

18
19 ~~The~~ If requested by the Agency, the contractor must prepare and implement a
20 corrective action plan to address and remedy all deficiencies or violations in a timely
21 manner in response to findings of deficiencies by ~~DARS or HHSC~~ the Agency or
22 other federal or state oversight authorities. The corrective action plan must be
23 ~~negotiated to the satisfaction of DARS and HHSC. DARS or HHSC~~ acceptable to the
24 Agency. The Agency may subsequently monitor and document the contractor's
25 compliance with the corrective action plan as accepted.

26
27 **§858.9. Adverse Actions.**

28
29 (a) ~~DARS or HHSC~~ The Agency may impose an adverse action when the contractor fails
30 to follow the terms of the contract or fails to comply with ~~DARS or HHSC~~ Agency
31 rules, policies, and procedures. ~~DARS or HHSC~~ The Agency may impose adverse
32 actions for reasons including, but not limited to:

33
34 (1) ~~DARS' or HHSC's~~ the Agency's determination that ~~consumer~~ one or more
35 customers' health and safety has been or is jeopardized;

36
37 (2) the contractor's failure to submit an acceptable written corrective action plan as
38 requested by the Agency or failure to comply with ~~its~~ an accepted corrective
39 action plan;

40
41 (3) the contractor's failure to follow an agreed-upon audit resolution payment plan;

42
43 (4) the contractor's failure to submit an acceptable cost report, if applicable;

44
45 (5) the contractor's failure to comply with the contract ~~or program~~ requirements;

- (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 ~~DARS, the Agency or~~ any health and human services program, ~~or the federal government; or;~~
- (9) debarment or exclusion from a federal program;
- (10) a validated report(s) or reports of abuse, neglect, or exploitation ~~when the perpetrator is~~ where an owner, employee, or volunteer who has direct access to ~~consumers.~~ 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) ~~Types of~~ The Agency may take the following adverse actions ~~may include:~~

- (1) Recoup money that the contractor owes as a result of overpayments or other billing irregularities; ~~Recoupment. DARS or HHSC collects money the contractor owes as the result of overpayments or other billing irregularities.~~
- (2) Place a vendor hold on ~~Vendor hold. DARS or HHSC withholds the contractor's contract payments. DARS or HHSC may put one or all of the contractor's contracts on vendor hold. The vendor hold is, which must be released when ~~DARS or HHSC~~ the Agency determines that the contractor has resolved the issue or issues causing the hold; ~~reason(s) for the hold. In addition to the reasons listed in subsection (a) of this section, DARS or HHSC may place a vendor hold on the contractor's contract(s):~~
 - (A) ~~to recoup overpayments made to the contractor; or~~
 - (B) ~~to recover any audit exceptions assessed against the contractor.~~~~
- (3) Deny all or part of a claim; ~~Denial of claim. DARS or HHSC denies payment in whole or part for a claim filed within program time limits.~~
- (4) Direct the contractor to suspend or terminate a subcontractor's participation in the provision of goods or services; ~~Suspension of subcontractor's participation or payments; termination of subcontract. DARS or HHSC directs a contractor~~

1 ~~to suspend a subcontractor's participation, suspend a subcontractor's payments,~~
2 ~~or terminate a subcontract.~~

- 3
- 4 (5) Terminate a contract for cause before its expiration date.~~Involuntary contract~~
5 ~~termination. DARS or HHSC may terminate a contract for cause by citing the~~
6 ~~contractor's failure to comply with the terms of the contract or with DARS or~~
7 ~~HHSC rules, policies, and procedures.~~
- 8
- 9 (6) Suspend the contractor's right to conduct business with the Agency.;
10 ~~Suspension. DARS or HHSC temporarily suspends the contractor's right to~~
11 ~~conduct business with DARS. The causes for and conditions of suspension are~~
12 ~~described in §392.323 of this subchapter (relating to Causes and Conditions of~~
13 ~~Suspension).~~
- 14
- 15 (7) Debar the contractor's right to contract or conduct business with the Agency,
16 in any capacity, for a specified period of time; or,~~Debarment. DARS or HHSC~~
17 ~~does not allow a contractor to conduct business with DARS, in any capacity,~~
18 ~~for a certain period of time. The causes for and conditions of debarment are~~
19 ~~described in §392.321 of this subchapter (relating to Causes and Conditions of~~
20 ~~Debarment).~~
- 21
- 22 (8) Take any other less severe action or actions, which the Agency determines
23 necessary to ensure the contractor's compliance with the underlying contract,
24 after considering the circumstances of a particular case.

25

26 **§858.10. Debarment and Suspension of ~~Current and Potential Contractor~~**
27 **Rights Contractors.**

- 28
- 29 (a) Debarment and suspension apply to contracts.~~Requirements in this section apply to~~
30 ~~all types of contracts with DARS.~~
- 31
- 32
- 33 (b) Debarment shall be imposed for a period commensurate with the seriousness of the
34 cause(s). Generally, debarment should not exceed three years, except for violations
35 of 41 USC Chapter 81 Drug Free Workplace. If a suspension precedes a debarment,
36 the suspension period shall be considered in determining the debarment period. The
37 Agency may extend the debarment for an additional period, if the Agency determines
38 that an extension is necessary to protect the Agency's interest. However, a debarment
39 may not be extended solely upon the facts and circumstances upon which the initial
40 debarment action was based. If debarment for an additional period is determined to
41 be necessary, the same procedures to impose an initial debarment shall be followed
42 to extend the debarment. ~~Debarment is the termination of rights to continue an~~
43 ~~existing contract, to receive a new contract, to participate as a contractor or manager,~~
44 ~~to provide goods or services to DARS consumers either directly or indirectly while~~
45 ~~working for a DARS or HHSC contractor, or to make a bid, offer, application, or~~
46 ~~proposal for a DARS or HHSC contract. The debarment is for a specified time~~

1 commensurate with the seriousness of the violation, the extent of the violation, prior
2 impositions of sanctions or penalties, willingness to comply with program rules and
3 directives, and other pertinent information. Generally, debarment does not exceed six
4 years. Where conditions warrant, a longer period may be imposed.
5

6
7 (c) A suspension is in effect until an investigation, hearing or trial is concluded and the
8 Agency determines the contractor's future ability to contract or subcontract with the
9 Agency. ~~Suspension is the temporary suspension of a contractor's or potential~~
10 ~~contractor's rights to conduct business with DARS or HHSC. A suspension is in~~
11 ~~effect until an investigation, hearing, or trial is concluded and DARS can make a~~
12 ~~determination about:~~

13
14 (1) ~~the contractor's future right to contract or subcontract; or~~

15
16 (2) ~~a potential contractor's future right to have DARS or HHSC consider its offer,~~
17 ~~bid, proposal, or application.~~

18
19 (d) The Agency may suspend a contractor's contract if the Agency suspects that grounds
20 may exist for debarment.
21

22
23 (e)(d) For purposes of both debarment and suspension of ~~contractual rights, DARS or~~
24 ~~HHSC~~ a contract, the Agency may impute the conduct of ~~an individual, corporation,~~
25 ~~partnership, or other association to the contractor, potential contractor, or the~~
26 ~~responsible entity of the contractor or potential contractor with whom the individual,~~
27 ~~corporation, partnership, or other association is employed or otherwise associated.~~
28 Even an individual even though the underlying conduct may have occurred while ~~an~~
29 ~~individual, corporation, partnership, or other association~~ the respondent was not
30 associated with the contractor ~~or potential contractor, suspension of contractual~~
31 ~~rights or debarment may be imposed. Remedial actions taken by the responsible~~
32 ~~officials of the contractor or potential contractor are considered in determining~~
33 ~~whether either suspension of contractual rights or debarment is warranted.~~
34

35 §858.11. Causes and Conditions of Debarment.

36
37 (a) The Agency may ~~DARS or HHSC may remove contractual rights from an individual, a~~
38 ~~corporation, a partnership, or a division of~~ debar a contractor ~~or legal entity~~ for
39 ~~causes~~ reasons including the following:

40
41
42 (1) Being adjudicated as ~~being found~~ guilty, pleading guilty, pleading nolo contendere, or
43 receiving a deferred adjudication in a criminal court relating to:

44
45 (A) Obtaining, ~~obtaining,~~ attempting to obtain, or performing a public or
46 private ~~contractor~~ contract or subcontract;

1
2 (B) Engaging ~~engaging~~ in embezzlement, theft, forgery, bribery, falsification
3 or destruction of records, fraud, receipt of stolen property, making false
4 statements or claims, tax evasion, or any other offense indicating moral
5 turpitude or a lack of business integrity or honesty;

6
7
8 (C) Use or possession of ~~being involved with dangerous drugs,~~ controlled or
9 illegal substances, or other drug-related offense;

10
11 (D) Violating ~~violating~~ federal antitrust statutes arising from submitting bids
12 or proposals;

13
14 (E) Committing ~~committing~~ an offense involving physical or sexual abuse or
15 neglect; or

16
17 (F) Committing an offense involving the direct support or promotion of
18 human trafficking.

19
20 (2) Being ~~being~~ debarred from contracting by any unit of the federal ~~government or any~~
21 ~~unit of a~~ or state government;

22
23 (3) Violating Agency ~~violating DARS or HHSC~~ contract provisions, including failing to
24 perform according to the terms, conditions, and specifications, or within the time
25 ~~limit(s)~~ specified, in ~~a DARS or HHSC~~ an Agency contract, including, but not limited
26 to, the following:

27
28 (A) Failing ~~failing~~ to abide by applicable federal and state statutes, rules,
29 regulations, policies, and procedures, such as those regarding
30 ~~persons~~ individuals with disabilities and those regarding civil rights;

31
32
33 (B) Having ~~having~~ a record of failure to perform or of unsatisfactory
34 performance according to the terms of one or more contracts or
35 subcontracts, if that failure or unsatisfactory performance has occurred
36 within five years preceding the determination to debar. ~~This~~
37 ~~subparagraph applies only for actions occurring after the effective date of~~
38 ~~these rules.~~ Failure to perform and unsatisfactory performance
39 ~~includes~~ include, but are not limited to, the following:
40
41

- 1 (i) ~~Failing~~failing to correct contract performance deficiencies after
 2 receiving written notice about them from ~~DARS, HHSC,~~the Agency
 3 or ~~their~~its authorized agents;
- 4
- 5
- 6 (ii) ~~Failing~~failing to repay or make and ~~follow through with~~complete
 7 arrangements satisfactory to ~~DARS or HHSC~~the Agency to repay
 8 identified overpayments or other erroneous payments, or assessed
 9 liquidated damages or penalties;
- 10
- 11
- 12 (iii) ~~Failing~~failing to meet standards that are required for licensure or
 13 certification, or that are required by state or federal law, ~~DARS or~~
 14 ~~HHSC~~Agency rules ~~or standards incorporated in contracts, or~~
 15 Agency policy concerning ~~DARS contracts~~contractors;
- 16
- 17
- 18 (iv) ~~Failing~~failing to execute contract amendments required by ~~DARS or~~
 19 ~~HHSC~~the Agency;
- 20
- 21
- 22 (v) ~~Billing~~billing for services or ~~merchandise~~goods not provided to the
 23 ~~consumer~~customer;
- 24
- 25
- 26 ~~(vi) submitting cost reports containing costs not associated with or not~~
 27 ~~covered by the contract or DARS rules and instructions. Intent to~~
 28 ~~increase individual or statewide rates or fees by submitting~~
 29 ~~unallowable costs must be shown for a single cost report, but intent~~
 30 ~~may be inferred when a pattern of submitting cost reports with~~
 31 ~~unallowable costs is shown;~~
- 32
- 33 ~~(vi)~~(vii) ~~Submitting~~submitting a false report or misrepresentation which,
 34 if used, may increase individual or statewide rates or fees;
- 35
- 36
- 37 ~~(vii)~~(viii) ~~Charging customers~~charging consumer or patient fees contrary
 38 to ~~DARS or HHSC~~Agency rules or policy;
- 39
- 40
- 41 ~~(viii)~~(ix) ~~Failing~~failing to notify and reimburse ~~DARS~~the Agency or its
 42 agents for services ~~DARS~~that the Agency paid for when the
 43 contractor received reimbursement from a liable third party;
- 44
- 45

1 ~~(ix)(x)~~ Failing failing to disclose or make available, upon demand, to
2 ~~DARS~~the Agency or its representatives (including appropriate
3 federal and state agencies) records that the contractor is required to
4 maintain;

5
6
7 ~~(x)(xi)~~ Failing failing to provide and maintain services within standards
8 required by statute, ~~regulation~~regulations, or contract; or
9

10
11 ~~(xi)(xii)~~ Violating violating the Texas Human Resources, Government,
12 or Labor Code provisions applicable to the ~~contract~~contractor or any
13 rule or regulation issued under the referenced Code(s)~~Code~~;
14

15
16 (4) Submitting submitting an offer, bid, proposal, or application that contains a
17 false statement or misrepresentation or omits pertinent facts or documents that
18 are material to the procurement;
19

20
21 (5) Engaging engaging in an abusive or neglectful practice that results in or could
22 result in death or injury to the ~~consumer~~customer served by the contractor; ~~or~~
23

24
25 (6) Knowingly knowingly and willfully using a debarred person individual or legal
26 entity as an employee, independent contractor, or agent ~~to perform~~associated
27 with any service provided in performance of a contract with ~~DARS or~~
28 ~~HHSC~~the Agency;
29

30 (7) Failure to pay a substantial debt or debts, including disallowed costs and
31 overpayments, owed to any federal or state agency instrumentality, provided
32 the debt is uncontested by the debtor or, if contested, provided that the debtor's
33 legal and administrative remedies have been exhausted; or
34

35
36 (8) Any other cause of a serious or compelling nature that affects a contractor's
37 present or future ability to perform under the contract or that presents an
38 imminent risk of harm to or liability for the Agency;
39

40 (b) In accordance with terms specified by ~~DARS or HHSC, individuals, parts of entities, and~~
41 ~~entities~~the Agency, an individual that ~~have~~has been debarred may not:
42

43 (1) receive a contract;

44
45 (2) be allowed to retain a contract that has been awarded before debarment;
46

1
2
3 ~~(3) bid or otherwise make offers to receive a contract or subcontract;~~

4
5 (3)(4) participate as a vendor in DARS Agency programs that do not require the
6 contractor individual to sign a contract or agreement;

7
8 ~~(5) either personally or through a clinic, group, corporation, or other association,~~
9 ~~bill to or receive payment from DARS for any services or supplies provided by~~
10 ~~the debarred entity on or after the effective date of the debarment.~~
11 ~~Additionally, DARS will not pay for any services ordered, prescribed, or~~
12 ~~delivered by the debarred entity for DARS recipients after the date of~~
13 ~~debarment. No costs associated with a debarred entity, including the salary,~~
14 ~~fringe, overhead, payments to, or any other costs associated with an employee,~~
15 ~~owner, officer, director, board member, independent contractor, manager, or~~
16 ~~agent who was debarred may be included in a DARS cost report or any other~~
17 ~~document that will be used to determine an individual payment rate, a~~
18 ~~statewide payment rate, or a fee; or~~

19
20 (4) provide goods or services to Agency customers either directly or indirectly
21 while working for an Agency contractor; or

22
23 (5) either directly or through an intermediary, bill to or receive payment from the
24 Agency for any services or supplies provided by the debarred individual on or
25 after the effective date of the debarment. The Agency will not pay for any
26 services ordered, prescribed, or delivered by the debarred individual to Agency
27 customers after the date of debarment. No costs associated with a debarred
28 individual, including the salary, fringe benefits, overhead, payments to, or any
29 other costs associated with an individual who was debarred may be included in
30 an Agency cost report or any other document that will be used to determine an
31 individual payment rate, a statewide payment rate, or a fee. Nothing in this
32 provision shall be construed in a manner that would prevent a debarred
33 individual, who is also a VR customer, from receiving VR services as a VR
34 customer.

35
36 ~~(6) provide goods or services to DARS consumers either directly or indirectly~~
37 ~~while working for a DARS contractor.~~

38
39 (c) A single occurrence of a violation may result in debarment or suspension.
40 ~~Debarment may be applied against an individual, a corporation, a partnership, a~~
41 ~~division of a contractor, or an entire legal entity, or a specified part of a legal entity.~~

42
43 ~~(d) Even a single occurrence of a violation may result in debarment or suspension if it is~~
44 ~~severe. Other adverse actions may be taken if the violation is isolated or less severe.~~
45

1 §858.12. Causes and ~~Conditions~~Results of Suspension.

2
3 (a) The Agency ~~DARS or HHSC~~ may suspend a ~~contractor's or potential contractor's~~
4 ~~contractual rights~~contract whenever ~~DARS or HHSC finds that there is a reasonable~~
5 ~~basis to believe that~~ grounds for debarment exist.

6
7 (b) Suspension ~~may be imposed immediately~~ will result in one or more of the following
8 ~~DARS' or HHSC's notification to a contractor or potential contractor. In addition,~~
9 ~~suspension may be imposed on a potential contractor if the contractor has an~~
10 ~~outstanding indictment or DARS or HHSC has information about an offense that is~~
11 ~~grounds for indictment.;~~

12
13 ~~(b) The conditions of suspension are:~~

14
15 (1) The Agency ~~DARS or HHSC~~ may withhold payments, wholly or partly,
16 to the ~~affected~~ contractor during the period of suspension.

17
18 (2) The Agency ~~DARS or HHSC~~ may refuse to accept a bid, offer,
19 application, or proposal from, or to award a contract to, the affected
20 ~~potential~~ contractor during the period of suspension.

21
22 (3) The Agency ~~DARS or HHSC~~ may remove existing customers referred
23 from or cease ~~referrals of additional consumers~~ referring customers to
24 ~~the~~ suspended entity contractor and may transfer existing
25 ~~consumers~~ customers to other contractors.

26
27 (c) If ~~DARS or HHSC~~ the Agency determines that the underlying reasons for suspension
28 have been resolved in favor of the ~~contractor, DARS or HHSC~~ respondent, the
29 Agency must, if applicable:

30
31 (1) pay the withheld payments for ~~any~~ services that were provided during the
32 suspension and that met the terms of an existing contract; and

33
34 (2) resume contract payments and ~~consumer~~ customer referrals.

35
36 (d) If ~~DARS or HHSC~~ the Agency determines that the underlying reasons for ~~the~~
37 suspension have are not ~~been~~ resolved in favor of the ~~contractor, DARS or HHSC~~
38 ~~institutes~~ respondent, the Agency shall institute debarment proceedings.

39
40 (e) In accordance with terms specified by ~~DARS or HHSC, individuals and entities~~ the
41 Agency, an individual whose ~~contractual rights have~~ contract has been placed in
42 suspension may not:

43
44 (1) receive a contract;

45
46 (2) submit an offer, bid, application, or proposal for a contract; or

1
2 (3) provide goods or services to ~~DARS or HHSC consumers~~ Agency customers
3 either directly or indirectly while working for ~~a DARS~~ an Agency contractor.
4

5 (f) A suspension may be applied against an individual, an entire legal entity, or a
6 specified part of a legal entity.
7

8
9 **§858.13. Evidence for Debarment ~~or Suspension~~.**
10

11 ~~The sufficiency of evidence required depends on the cause of the suspension or~~
12 ~~debarment.~~ In making a debarment decision, the Agency may consider the following
13 factors:
14

15 ~~(1) If there is evidence that the contractor or potential contractor has been found~~
16 ~~guilty, pleaded guilty, pleaded no contest, or received a deferred adjudication~~
17 ~~in criminal court relating to an activity prohibited in this chapter, that is~~
18 ~~sufficient evidence to suspend or debar. If the decision that caused debarment~~
19 ~~is reversed on appeal, the contractor must provide written proof of the reversal~~
20 ~~to have its contract rights restored. DARS or HHSC restores contract rights~~
21 ~~unless the contractor is also debarred or suspended on other grounds.~~
22

23 ~~(2) If the cause is debarment from contracting by any unit of the federal~~
24 ~~government or any unit of a state government, it is sufficient to offer official~~
25 ~~notice from the other state or federal agency that the entity has been debarred.~~
26 ~~The notice may be addressed to either DARS or HHSC.~~
27

28 ~~(3) Other causes of debarment or suspension may be established by evidence of~~
29 ~~failure to meet contracting terms or standards, including evidence of the~~
30 ~~severity or recurrence of violations of performance requirements.~~
31

32 (1) The actual or potential harm or impact that results or may result from the
33 wrongdoing.
34

35 (2) The frequency of incidents and/or duration of the wrongdoing.
36

37 (3) Whether there is a pattern or history of wrongdoing.
38

39 (4) Whether an individual is or has been disqualified by an agency of the federal
40 government or has not been allowed to participate in state or local contracts or
41 assistance agreements based on conduct similar to one or more of the causes
42 for debarment specified in this part.
43

44 (5) Whether and to what extent the individual planned, initiated, or carried out the
45 wrongdoing.
46

- 1 (6) Whether the individual accepted responsibility for the wrongdoing and
2 recognized the seriousness of the misconduct that led to the cause for
3 debarment.
- 4
- 5 (7) Whether the individual paid or agreed to pay all criminal, civil and
6 administrative liabilities for the improper activity, including any investigative
7 or administrative costs incurred by the government, and has made or agreed to
8 make full restitution.
- 9
- 10 (8) Whether the individual cooperated fully with the government agencies during
11 the investigation and with any court or administrative action. In determining
12 the extent of cooperation, the Agency may consider when the cooperation
13 began and whether the individual disclosed all pertinent information known to
14 the individual.
- 15
- 16 (9) Whether the wrongdoing was pervasive within the individual's organization.
- 17
- 18 (10) The types of positions held by the individuals involved in the wrongdoing.
- 19
- 20 (11) Whether the individual's organization took appropriate corrective action or
21 remedial measures.
- 22
- 23 (12) Whether the individual's principals tolerated the offense.
- 24
- 25 (13) Whether the individual brought the activity cited as a basis for the debarment
26 to the attention of the appropriate Agency representative in a timely manner.
- 27
- 28 (14) Whether the individual fully investigated the circumstances surrounding the
29 cause for debarment and, if so, made the result of the investigation available to
30 the Agency.
- 31
- 32 (15) Whether the individual had effective standards of conduct and internal control
33 systems in place at the time the questioned conduct occurred.
- 34
- 35 (16) Whether the individual took appropriate disciplinary action against the
36 individuals responsible for the activity that constitutes the cause for debarment.
- 37
- 38 (17) Whether the individual had adequate time to eliminate the circumstances
39 within the individual's organization that led to the cause for the debarment.
- 40
- 41 (18) Other factors related to the contractor's required performance under the
42 contract that the Agency determines are appropriate to the circumstances of a
43 particular case.

1
2 **§858.14. Notice for Debarment or Suspension.**
3

4 Written notices of suspension or debarment must include the following, as applicable:
5

- 6 (1) the grounds for the action;
7
8 (2) the length of the debarment;
9
10 (3) the conditions that might cause a suspension to be released;
11
12 (4) a statement explaining the effect of the suspension or debarment; and
13
14 (5) a statement ~~as to~~ whether the suspension or debarment is in effect for all
15 Agency contracts throughout DARS or just ~~for~~ a particular Agency
16 contract DARS program.
17

18 **§858.15. Appeals.**
19

- 20 (a) A contractor ~~has the right to~~ may appeal ~~any~~ an initial adverse action
21 ~~imposed~~ rendered by the Agency under §858.9 of this chapter by hand delivery, mail,
22 common carrier, facsimile (fax) transmission, or other method approved by the
23 Agency in writing DARS. A contractor shall only submit an appeal by hand delivery,
24 mail, or common carrier to the Agency as directed on the Contractor Notice of
25 Appeal Rights (VR 1309). An appeal sent by unapproved methods or to a different
26 address will not be considered by the Agency as a valid appeal.
27
28
29 (b) The Agency's initial adverse action is final for all purposes unless the contractor
30 files an appeal not later than 28 calendar days after the date on which the initial
31 adverse action is mailed, sent by electronic mail, or sent by facsimile to the
32 contractor. The timeliness of an appeal is subject to the rules and procedures set out
33 in the Unemployment Insurance rules at 40 TAC Chapter 815, except to the extent
34 that such sections are clearly inapplicable or contrary to provisions set out under
35 these Chapter 858 rules or the contract between the parties. ~~To appeal an adverse~~
36 ~~action, the contractor, referred to in this subchapter as the appellant, must ensure~~
37 ~~that DARS receives a written request for an appeal within 30 days of the~~
38 ~~contractor's receipt of the notice of adverse action.~~
39
40 ~~(c) The appellant must ensure that the request for an appeal:~~
41
42 ~~(1) clearly states that the purpose of the letter is to appeal DARS' adverse action;~~
43
44 ~~(2) is received by DARS at the address provided in the notice of adverse action~~
45 ~~letter;~~
46

1 ~~(3) is received by DARS according to time frames provided in this section; and~~

2
3 ~~(4) includes all required information and documentation as outlined in this section.~~

4
5 (c)(d) To be considered, the appeal must include the following:

6
7 (1) A statement of facts describing how ~~an Agency~~ an Agency decision, action, or inaction
8 ~~by DARS~~ deviated from contract terms, published policy, or state or federal
9 laws or regulations;

10
11 (2) The ~~appellant's~~ contractor's claim, including pertinent contract sections;

12
13 (3) A statement of the issue ~~(s)~~ or issues in dispute;

14
15 (4) A brief statement about why ~~DARS' decision~~ the Agency's initial adverse
16 action is wrong;

17
18 (5) Copies of evidence or documentation supporting the appeal; and

19
20 (6) The action requested.

21
22 (d) The contractor may supplement its appeal after being perfected but before the
23 Agency rendering a decision on the merits.

24
25 ~~(e) In the request for an appeal letter, the appellant may also request a meeting with~~
26 ~~DARS. This request should include a description of any special accommodations~~
27 ~~needed for the appellant, witnesses, or representatives. At the meeting, the appellant:~~

28
29 ~~(1) may be represented by a person of his or her selection; and~~

30
31 ~~(2) will be provided with an opportunity to present evidence and information to~~
32 ~~support his or her position.~~

33
34
35 (e) As part of the appeal, the contractor may also request a meeting with the Agency.
36 Whether a meeting will be granted is at the Agency's discretion. The meeting request
37 should include a description of any special accommodations needed for the
38 contractor, witnesses, or representatives. At the meeting, the contractor may:

39
40 (1) be represented by an individual of the contractor's selection; and

41
42 (2) present evidence and information to support the contractor's position.

43
44 (f) The Agency will notify the contractor whether its appeal has been perfected and has
45 met the requirements in subsection (c) of this section for consideration on its merits.
46 ~~If the appeal does not meet the requirements of this chapter, DARS will notify the~~

1 ~~appellant that their request for an appeal is~~ will be denied ~~because it did not meet~~
2 ~~requirements,~~ and the initial adverse action will be the Agency's final decision.

- 3
4 (g) An Agency appeal decision ~~DARS provides a written decision to the appellant~~
5 ~~within 30 days after conclusion of the meeting, or if no meeting is held, within~~
6 ~~45~~ becomes final 14 days after the date ~~DARS receives the appeal,~~ appeal decision is
7 mailed, unless ~~the appropriate DARS representative extends the time~~ the contractor
8 files a written request for reconsideration before that date.

9
10 **§858.16. Request for Reconsideration.**

- 11
12 (a) The contractor ~~After DARS issues a decision on an appeal, the appellant~~ may submit
13 ~~in writing~~ a request for reconsideration following the Agency's issuance of the appeal
14 decision by hand delivery, mail, common carrier, facsimile (fax) transmission, or
15 other method approved by the Agency in writing:

16
17 (1) A request for reconsideration shall only be hand delivered, mailed, or sent by
18 common carrier to the Agency as directed on the Contractor Notice of Rights
19 (VR 1309). A request for reconsideration sent by unapproved methods or to a
20 different address will not be considered a valid request for reconsideration by
21 the Agency.

22
23 (2) The timeliness of a request for reconsideration is subject to the rules and
24 procedures set out in the Unemployment Insurance rules at Chapter 815 of this
25 title, except to the extent that such sections are clearly inapplicable or contrary
26 to provisions set out under these Chapter 858 rules or the contract between the
27 parties.

28
29 ~~(b) An appellant may submit a request for reconsideration only if the appellant's request~~
30 ~~for an appeal met the requirements set out in §392.329 of this subchapter (relating to~~
31 ~~Appeals).~~

32
33 ~~(c) Requests for reconsideration must be addressed to the DARS commissioner and~~
34 ~~must be received by DARS within 20 days after the date DARS issues the decision~~
35 ~~on the appeal.~~

36
37 ~~(d) The DARS commissioner may designate a representative(s) to receive the request~~
38 ~~for reconsideration and issue a decision on behalf of DARS.~~

39
40 ~~(e)~~ A ~~The~~ request for reconsideration ~~must~~ shall not be granted unless each of the
41 following three criteria are met:

- 42
43 (1) there is an ~~clearly state that the purpose of the letter is to request~~
44 reconsideration offering of new evidence, which was not presented as part of
45 DARS' decision on an ~~the original~~ appeal pursuant to §858.15 of this chapter;
46

1 (2) there is a compelling reason why the evidence was not presented earlier
2 ~~specifically point out any errors in the appeal decision; and~~

3
4 (3) there is a specific explanation of how consideration of the evidence would
5 change the outcome of the decision. ~~specify all relief requested; and~~

6
7 ~~(4) state all reasons why the relief should be granted.~~

8
9 ~~(c)(f) The Agency's decision on the request for reconsideration is the final decision of the~~
10 Agency. ~~DARS issues a decision on the request for reconsideration no later than 45~~
11 ~~days after receipt of the request for reconsideration. The decision may affirm,~~
12 ~~reverse, or modify the adverse action previously imposed by DARS.~~

13
14 ~~(g) The decision on the request for reconsideration is the final decision of DARS.~~
15 ~~However, if the contractor believes DARS breached the contract, the contractor~~
16 ~~may pursue further action according to Government Code, Chapter 2260.~~