

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

**PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY OF STATE.**

ON **JUNE 23, 2026**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.

Estimated Publication Date of the Proposal in the *Texas Register*: July 10, 2026  
Estimated End of Comment Period: August 10, 2026

The Texas Workforce Commission (TWC) proposes the following new sections to Chapter 858, relating to Procurement and Contract Management Requirements for Purchase of Goods and Services for Vocational Rehabilitation Services:

§858.10 and §858.11

TWC proposes amendments to the following sections of Chapter 858, relating to Procurement and Contract Management Requirements for Purchase of Goods and Services for Vocational Rehabilitation Services:

§§858.1, 858.3, 858.7 - 858.9, 858.15, and 858.16

TWC proposes the repeal of the following sections of Chapter 858, relating to Procurement and Contract Management Requirements for Purchase of Goods and Services for Vocational Rehabilitation Services:

§§858.10 - 858.14

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

The purpose of the proposed Chapter 858 rule change is to update rule language to improve understanding and consistency with current TWC Vocational Rehabilitation (VR) Division and contract management practices, and to establish guidelines for a fair and consistent recoupment system for VR and contractors. Substantial changes include the addition of definitions; expansion of the Adverse Actions rules under §858.9, and the repeal of §§858.10 - 858.14, and adding new §858.10 (Suspension of Contractors) and §858.11 (Debarment of Contractors) to consolidate information on suspension and debarment.

**PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

### **§858.1. Definitions**

Section 858.1 is amended to add new definitions and update existing ones for clarity. A definition for "Improper payment" is added to provide a comprehensive list of conditions that result in payments a contractor is not entitled to receive. New definitions for "Fraud," "Overpayment," and "Service authorization" were also added.

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

Section 858.3 is amended to add new subparagraph (a)(1)(E) requiring a contractor to ensure that no staff members are excluded by TWC, the state, or federal government from participating in contracts or providing services. New subparagraph (a)(1)(F) requires contractors to complete and maintain criminal background checks on all applicable staff. New subsection (j) requires contractors to coordinate with VR staff to ensure all communications with a customer are in the customer's preferred or native language. New subsection (l) requires valid and signed authorization before a contractor may provide goods or services to a customer.

### **§858.7. Contract Monitoring**

Section 858.7 is amended to reflect modern monitoring practices, such as desk reviews and video conferences. A new subsection (c) is added to provide details on which documents and other information the contractor must make available to the Agency.

### **§858.8. Corrective Action Plan**

Section 858.8 is amended to define timelines for preparing and implementing corrective action plans. A new provision is added that allows the Agency to issue a "directed corrective action plan" if a contractor fails to submit an acceptable plan.

### **§858.9. Adverse Actions**

Section 858.9 is amended and reorganized to establish a clearer and more structured framework for imposing adverse actions. The amendments add new subsections that outline factors the Agency will use to assess the severity of noncompliance (subsection (c)) and governing principles for the application of adverse actions, such as Agency discretion and consideration of mitigating factors (subsection (d)). New subsection (e) requires the Agency to develop a matrix to support the application of adverse actions.

### **§858.10. Debarment and Suspension of Contractors**

Section 858.10 is repealed. Its content has been separated, significantly expanded, and moved into two new, more detailed sections: §858.10 (Suspension of Contractors) and §858.11 (Debarment of Contractors).

### **§858.10. Suspension of Contractors**

New §858.10 is added to consolidate all rules regarding the temporary suspension of a contractor. This section clearly defines what a suspension is, its scope, the potential results (such as withholding payments and ceasing referrals), the process for resolving a suspension, and the specific information that must be included in a formal Notice of Suspension.

### **§858.11. Causes and Conditions of Debarment**

Section 858.11 is repealed. Its content has been revised and consolidated into the new §858.11

(Debarment of Contractors) to create a single, comprehensive rule on the subject.

**§858.11. Debarment of Contractors**

New §858.11 is added to create a single, comprehensive section governing debarment. This section consolidates and clarifies the causes for debarment, the period and scope, and the results of being debarred. It also adds subsection (e) detailing types of evidence the Agency may consider when making a debarment decision, making the process more transparent and defensible.

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

Section 858.12 is repealed. Its content has been revised and consolidated into the new §858.10 (Suspension of Contractors).

**§858.13. Evidence for Debarment**

Section 858.13 is repealed. Its content has been significantly expanded upon and incorporated into the new §858.11(e) (Debarment of Contractors).

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

Section 858.14 is repealed. The notice requirements have been updated and incorporated directly into new §858.10(e) for suspensions and new §858.11(f) for debarments.

**§858.15. Appeals**

Section 858.15 is amended to clarify that contractors do not have the right to appeal against escalating adverse actions that are imposed due to a contractor's failure to remedy an initial adverse action in subsection (a) and adds that a contractor may be represented by an attorney or designated representative in new subsection (e). The subsections following have been re-lettered.

**§858.16. Request for Reconsideration**

Section 858.16 is amended to remove the Contractor Notice of Rights form number, as form numbers sometimes change, so as not to inadvertently outdate the rules if that happens.

**PART III. IMPACT STATEMENTS**

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

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

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

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

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

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

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

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

#### Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking, as discussed elsewhere in this preamble, is to improve understanding and consistency with current TWC VR and contract management practices.

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

#### Government Growth Impact Statement

TWC has determined that during the first five years the proposed rules will be in effect, they:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will not positively or adversely affect the state's economy.

#### Economic Impact Statement and Regulatory Flexibility Analysis

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

or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the proposed rules.

Tammy Ames, Director, Vocational Rehabilitation Division, has determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to improve understanding and consistency with current TWC VR and contract management practices.

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

#### **PART IV. REQUEST FOR IMPACT INFORMATION**

TWC requests, from any person required to comply with the proposed rule or any other interested person, information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis. Please submit the requested information to [TWCPolicyComments@twc.texas.gov](mailto:TWCPolicyComments@twc.texas.gov) no later than August 10, 2026.

#### **PART V. PUBLIC COMMENTS**

Comments on the proposed rules may be submitted to [TWCPolicyComments@twc.texas.gov](mailto:TWCPolicyComments@twc.texas.gov) and must be received no later than August 10, 2026.

#### **PART VI. STATUTORY AUTHORITY**

The rules are proposed under:

- Texas Labor Code, §352.103, which provides TWC with the authority to adopt rules for the provision of VR services; and
- Texas Labor Code, §301.0015, which provides 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 proposed rules relate to Title 4, Texas Labor Code, particularly Chapters 301 and 352.

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FOR PURCHASE OF GOODS AND SERVICES FOR VOCATIONAL  
REHABILITATION SERVICES**

**§858.1. Definitions.**

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

- (1) Amendment--A formal revision or addition to a contract.
- (2) Bid--An offer to contract with the state submitted in response to a bid invitation.
- (3) Contract--~~An A-written~~ agreement between the Agency and a contractor by the terms of which the contractor agrees to provide goods or services, by sale or lease to or for the Agency for Vocational Rehabilitation (VR) customers.
- (4) Contract records--All financial and programmatic records, supporting documents, papers, statistical data, or any other written or electronic materials that are pertinent to each specific contract instrument.
- (5) Contractor--An individual holding a ~~written~~ contract or service authorization.
- (6) Corrective action plan--Specific steps to be taken by a contractor to resolve identified deficiencies and/or to address concerns that the contracting agency has regarding the contractor's compliance with contract terms or other applicable laws, rules, or regulations. The corrective action plan may also focus on improving contractor performance (as it relates to service delivery, reporting, and/or financial stability).
- (7) Debarment--The termination of the ability to continue an existing contract, to receive a new contract, to participate as a contractor or subcontractor, to provide goods or services to Agency Vocational Rehabilitation (VR) customers either directly or indirectly while working for an Agency contractor, or to make a bid, offer, application, or proposal for an Agency contract.
- (8) Effective date--The date of complete execution of the contract or the date upon which the parties agree that the contract takes effect.
- (9) Fraud--An individual commits fraud if, to obtain or increase a payment or other benefit, the individual or another on the individual's behalf:
  - (A) makes a false statement or representation that the individual knew or should have known was false; or

- (B) fails to disclose a fact when the individual knew or should have known the fact was material.
- (10) Improper payment--A payment to a contractor from the Agency that the contractor was not entitled to receive. Conditions resulting in an improper payment, include, but are not limited to:
- (A) the Agency overpaying for a good or service;
  - (B) a non-qualified individual providing a service or services;
  - (C) a contractor incorrectly billing for two or more mutually exclusive activities or services for a customer;
  - (D) the Agency paying full price when the payment should have been reduced or discounted;
  - (E) the Agency paying for a good or service not received;
  - (F) invoices or reports that include false information, and which would not qualify for payment if the information was accurate;
  - (G) invoices or reports that include incomplete information, and which would not qualify for payment if the information was complete;
  - (H) the Agency paying for services for which outcomes required for payment were not met and no contract modification request was approved per policy; or
  - (I) other situations in which the error causes the payment to be outside the purposes of the VR program.
- (11)~~(9)~~ Individual--Any person~~individual~~, corporation, partnership, association, unit of government, or legal entity, however organized, or any portion thereof.
- (12) Overpayment--Any expenditure of Agency funds to a contractor that exceeds the published rate, contracted rate, or rate indicated on the Service Authorization; duplicates a previous payment; or covers goods or services that were not ultimately provided or utilized for the client's rehabilitation plan.
- (13)~~(10)~~ Program--Agency activities that are designed to deliver services or benefits provided by statute.
- (14)~~(11)~~ Respondent--An individual against whom the Agency has initiated an adverse ~~a debarment or suspension~~ action.

(15) Service authorization--A request for a contractor to provide identified goods or services based on the terms and conditions specified in the authorization.

~~(16)(12)~~ Subcontract--~~An~~~~A-written~~ agreement between the original contractor and a third party to provide all or a specified part of the goods, services, work, and/or materials required in the original contract.

~~(17)(13)~~ Suspension--The temporary discontinuance of a contractor's authorization to conduct business with the Agency.

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

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

(1) ensure that:

(A) staff members meet all qualification requirements established by Agency policy and regulations;

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

(C) staff credentials supporting qualifications are on file at the time of hire and maintained throughout the term of the contract; ~~and~~

(D) staff credentials are made available to Agency staff upon request;

(E) no staff member is debarred, suspended, or otherwise excluded from participating in contracts or providing services by the Agency, the State of Texas, or the federal government; and

(F) required criminal background checks are completed for all applicable staff and maintained on file;

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

(3) certify on or before the effective date of the contract that the contractor has and will maintain adequate operating funds for conducting business;

(4) have and maintain adequate staff to provide services on the effective date of the contract;

- (5) notify the Agency in writing of changes to contact information according to the requirements of the contract. Unless otherwise specified in the contract, the contractor must notify the Agency:
    - (A) within 10 calendar days after any address change, including of the location of the contractor's office, physical address, or mailing address;
    - (B) immediately of any change in administrator or director; and
    - (C) within seven working days of any change in the contact telephone number designated in the contract; [and](#)
  - (6) report any suspected violation of rules or laws to the appropriate investigative authority. This includes reporting to the Agency any abuse, neglect, or exploitation.
- (b) A contractor may not offer, give, or agree to give an Agency employee anything of value.
  - (c) A contractor or applicant may not engage in any activity that presents a real or apparent conflict of interest and must provide written attestation that no real or apparent conflicts of interest exist before execution of a contract with the Agency.
  - (d) Pursuant to Texas Government Code, §572.054(b), certain Agency employees may not represent or receive compensation from any individual concerning any contractual matter in which the former employee participated during his or her employment with the state.
  - (e) The Agency may choose not to enter into a contract:
    - (1) when, in the Agency's opinion, the contractor or a controlling party has a documented, unsatisfactory history in contracting with the Agency or with another state agency; [or](#)
    - (2) if the contractor:
      - (A) subcontracts any direct care services without specific authorization from the Agency; and/or
      - (B) assigns or transfers the contract without the Agency's prior written approval.
  - (f) The Agency may obtain criminal history information from the Texas Department of Public Safety and may use this information in awarding and administering Agency contracts. When the Agency uses the information, the terms and conditions of use are

included in the affected contracts.

- (g) Goods or services purchased or reimbursed by the Agency may be inspected or monitored at the discretion of the Agency.
- (h) The Agency may require corrective action, remove or reassign active customers to other contractors for services, and/or impose an adverse action against a contractor for failure to comply with the terms of the contract and/or Agency rules, policies, and procedures.
- (i) A contractor shall participate in orientation relating to Agency contract requirements before providing goods or services under a contract for the first time.
- (j) Each contractor must coordinate with the customer's VR counselor, Independent Living Services worker, or Older Individuals Who Are Blind worker, as appropriate, to ensure that all verbal and written communications between the contractor and the customer are conducted in the customer's preferred or native language.
- ~~(j) A contractor shall ensure that any facility in which services are provided includes individuals able to communicate in the native language of applicants, recipients of service, and other eligible individuals who have limited English proficiency.~~
- (k) Contractors shall take affirmative action to employ and advance in employment qualified individuals with disabilities.
- (l) A valid and signed service authorization for specific services or goods is required before the goods or services are provided to a customer.

#### **§858.7. Contract Monitoring.**

- (a) Any good or service purchased or reimbursed by the Agency may be monitored at the discretion of the Agency.
- (b) The Agency may conduct compliance monitoring reviews of the contractor's services to determine if the contractor is in compliance with the contract and with program rules and requirements. The Agency may conduct a desk review of documents, speak to the contractor's staff by telephone or video conference, or meet in person at the contractor's place of business, at a Workforce Solutions Office location, or at some other physical location. ~~These reviews are conducted at the location where the contractor is providing the services unless the Agency specifies a different location.~~ The Agency shall assess contractor performance based on contract standards.
- (c) The Agency may request that the contractor provides any information the Agency deems relevant to contract monitoring. The contractor shall make available all documents and other information related to a contract or service with the Agency,

including but not limited to work papers, reports, books, records, documentation related to criminal background checks, and supporting documents the Agency requests. The Agency may also observe the contractor providing services or observe the contractor's operations as part of contract monitoring.

~~(d)~~(e) The Agency may expand a compliance monitoring review period or any requested review sample at any time.

~~(e)~~(d) The Agency may conduct a fiscal monitoring review:

- (1) in conjunction with a compliance monitoring review;
- (2) independent of a compliance monitoring review;
- (3) when a contract is terminated;
- (4) as a result of a complaint; or
- (5) at other times, as the Agency considers necessary.

~~(f)~~(e) The Agency may use sampling methods in monitoring and auditing contracts.

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

#### **§858.8. Corrective Action Plan.**

(a) If requested by the Agency, the contractor shall prepare and ~~submit~~ ~~implement~~ a corrective action plan to address and remedy all deficiencies or violations within 20 business days of the issuance of ~~in a timely manner in response to~~ findings of deficiencies by the Agency or other federal or state oversight authorities. The corrective action plan must be acceptable to the Agency and must be implemented by the contractor consistent with the corrective action plan timeline or as defined in the corrective action plan. The Agency may subsequently monitor and document the contractor's compliance with the corrective action plan as accepted.

(b) If a contractor does not submit a corrective action plan that is acceptable to the Agency, the Agency may issue a directed corrective action plan that the contractor must complete to remedy all deficiencies or violations.

#### **§858.9. Adverse Actions.**

(a) The purpose of this section is to establish a framework for the Agency to take and apply consistent and appropriate adverse actions against a contractor for noncompliance with contract terms, Agency rules, policies, and procedures. These provisions apply to all contractors that have entered into a contract with the Agency

to provide VR goods or services.

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

- (1) the Agency's determination that one or more customers' health and safety has been or is jeopardized;
- (2) the contractor's failure to comply with a monitoring request or failure to provide requested documentation;
- ~~(3)(2)~~ the contractor's failure to submit an acceptable written corrective action plan as requested by the Agency ~~or failure to comply with an accepted corrective action plan;~~
- (4) the contractor's failure to comply with an accepted or directed corrective action plan;
- ~~(5)(3)~~ the contractor's failure to follow an agreed-upon audit resolution payment plan;
- ~~(6)(4)~~ the contractor's failure to submit an acceptable cost report, if applicable;
- ~~(7)(5)~~ the contractor's failure to comply with the contract requirements;
- (8) the contractor providing misinformation about the VR program or other providers;
- ~~(9)(6)~~ the contractor's failure to maintain a current required license or professional certification or the contractor allowing the expiration of any required license or professional certification, if applicable;
- ~~(10)(7)~~ the contractor's relocation to a new facility address that does not have the appropriate license, if applicable;
- (11) the contractor subcontracts any direct care service, or assigns or transfers the contract without the Agency's prior approval;
- ~~(12)(8)~~ the contractor's exclusion from contracting with the Agency or any health and human services program;
- ~~(13)(9)~~ debarment or exclusion from a federal program;
- ~~(14)(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.~~

(15) fraud;

(16) a significant or repeated failure to demonstrate the business integrity, honesty, or responsibility required to perform as a state contractor;

(17) any action or conduct that compromises the integrity or public trust in the Agency's programs; or

(18) any other cause that presents an imminent risk of harm to customers, or significant liability or financial loss to the Agency.

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

- (1) Recoup money that the contractor owes as a result of improper payment ~~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;
- (7) Debar the contractor's right to contract or conduct business with the Agency, in any capacity, for a specified period of time; or
- (8) Take any other less severe action or actions that the Agency determines necessary to ensure the contractor's compliance with the underlying contract, after considering the circumstances of a particular case.

(d) The Agency's decision to impose an adverse action and the gravity of that action will be based on an assessment of the relevant factors, including but not limited to the

following factors:

- (1) The severity of a contractor's noncompliance. Factors may include, but are not limited to, the:
    - (A) risk to customer health, safety, and welfare; and
    - (B) financial and other potential impact on the Agency or its customers;
  - (2) The contractor's intent, including evidence of willfulness or negligence, a simple error, or a pattern of repeated, uncorrected noncompliance;
  - (3) Mitigating factors, such as a contractor's good-faith cooperation, acceptance of responsibility, and prompt implementation of remedial measures; and
  - (4) The goods, services, or goals the contractor provided or performed under the contract as compared to the requirements of the contract.
- (e) The Agency retains the discretion to take any less or more severe action it deems necessary and appropriate based on the specific circumstances of the noncompliance.
- (f) The Commission shall adopt a matrix to support the application of adverse actions under this subchapter.

**~~§858.10. Debarment and Suspension of Contractors.~~**

- ~~(a) Debarment and suspension apply to contracts.~~
- ~~(b) Debarment shall be imposed for a period commensurate with the seriousness of the cause(s). Generally, debarment should not exceed three years, except for violations of 41 USC Chapter 81 Drug Free Workplace. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. The Agency may extend the debarment for an additional period, if the Agency determines that an extension is necessary to protect the Agency's interest. However, a debarment may not be extended solely upon the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the same procedures to impose an initial debarment shall be followed to extend the debarment.~~
- ~~(c) A suspension is in effect until an investigation, hearing, or trial is concluded and the Agency determines the contractor's future ability to contract or subcontract with the Agency.~~
- ~~(d) The Agency may suspend a contractor's contract if the Agency suspects that grounds may exist for debarment.~~

- ~~(e) For purposes of both debarment and suspension of a contract, the Agency may impute the conduct of an individual even though the underlying conduct may have occurred while the respondent was not associated with the contractor.~~

~~§858.11. Causes and Conditions of Debarment.~~

- ~~(a) The Agency may debar a contractor for reasons including the following:~~
- ~~(1) Being adjudicated as guilty, pleading guilty, pleading nolo contendere, or receiving a deferred adjudication in a criminal court relating to:
    - ~~(A) Obtaining, attempting to obtain, or performing a public or private contract or subcontract;~~
    - ~~(B) Engaging in embezzlement, theft, forgery, bribery, falsification or destruction of records, fraud, receipt of stolen property, making false statements or claims, tax evasion, or any other offense indicating moral turpitude or a lack of business integrity or honesty;~~
    - ~~(C) Use or possession of controlled or illegal substances, or other drug-related offense;~~
    - ~~(D) Violating federal antitrust statutes arising from submitting bids or proposals;~~
    - ~~(E) Committing an offense involving physical or sexual abuse or neglect; or~~
    - ~~(F) Committing an offense involving the direct support or promotion of human trafficking;~~~~
  - ~~(2) Being debarred from contracting by any unit of the federal or state government;~~
  - ~~(3) Violating Agency contract provisions, including failing to perform according to the terms, conditions, and specifications, or within the time specified, in an Agency contract, including, but not limited to, the following:
    - ~~(A) Failing to abide by applicable federal and state statutes, rules, regulations, policies, and procedures, such as those regarding individuals with disabilities and those regarding civil rights;~~
    - ~~(B) Having a record of failure to perform or of unsatisfactory performance according to the terms of one or more contracts or subcontracts, if that failure or unsatisfactory performance has occurred within five years preceding the determination to debar. Failure to perform and unsatisfactory performance include, but are not limited to, the following:~~~~

- ~~(i) Failing to correct contract performance deficiencies after receiving written notice about them from the Agency or its authorized agents;~~
  - ~~(ii) Failing to repay or make and complete arrangements satisfactory to the Agency to repay identified overpayments or other erroneous payments, or assessed liquidated damages or penalties;~~
  - ~~(iii) Failing to meet standards that are required for licensure or certification, or that are required by state or federal law, Agency rules, or Agency policy concerning contractors;~~
  - ~~(iv) Failing to execute contract amendments required by the Agency;~~
  - ~~(v) Billing for services or goods not provided to the customer;~~
  - ~~(vi) Submitting a false report or misrepresentation that, if used, may increase individual or statewide rates or fees;~~
  - ~~(vii) Charging customers fees contrary to Agency rules or policy;~~
  - ~~(viii) Failing to notify and reimburse the Agency or its agents for services that the Agency paid for when the contractor received reimbursement from a liable third party;~~
  - ~~(ix) Failing to disclose or make available, upon demand, to the Agency or its representatives (including appropriate federal and state agencies) records that the contractor is required to maintain;~~
  - ~~(x) Failing to provide and maintain services within standards required by statute, regulations, or contract; or~~
  - ~~(xi) Violating the Texas Human Resources, Government, or Labor Code provisions applicable to the contractor or any rule or regulation issued under the referenced Codes;~~
- ~~(4) Submitting an offer, bid, proposal, or application that contains a false statement or misrepresentation or omits pertinent facts or documents that are material to the procurement;~~
  - ~~(5) Engaging in an abusive or neglectful practice that results in or could result in death or injury to the customer served by the contractor;~~
  - ~~(6) Knowingly and willfully using a debarred individual as an employee, independent contractor, or agent associated with any service provided in performance of a contract with the Agency;~~

- ~~(7) Failure to pay a substantial debt or debts, including disallowed costs and overpayments, owed to any federal or state agency instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or~~
- ~~(8) Any other cause of a serious or compelling nature that affects a contractor's present or future ability to perform under the contract or that presents an imminent risk of harm to or liability for the Agency.~~
- ~~(b) In accordance with terms specified by the Agency, an individual that has been debarred may not:~~
  - ~~(1) receive a contract;~~
  - ~~(2) be allowed to retain a contract that has been awarded before debarment;~~
  - ~~(3) participate as a vendor in Agency programs that do not require the individual to sign a contract or agreement;~~
  - ~~(4) provide goods or services to Agency customers either directly or indirectly while working for an Agency contractor; or~~
  - ~~(5) either directly or through an intermediary, bill to or receive payment from the Agency for any services or supplies provided by the debarred individual on or after the effective date of the debarment. The Agency will not pay for any services ordered, prescribed, or delivered by the debarred individual to Agency customers after the date of debarment. No costs associated with a debarred individual, including the salary, fringe benefits, overhead, payments to, or any other costs associated with an individual who was debarred may be included in an Agency cost report or any other document that will be used to determine an individual payment rate, a statewide payment rate, or a fee. Nothing in this provision shall be construed in a manner that would prevent a debarred individual, who is also a VR customer, from receiving VR services as a VR customer.~~
- ~~(c) A single occurrence of a violation may result in debarment or suspension.~~

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

- ~~(a) The Agency may suspend a contract whenever grounds for debarment exist.~~
- ~~(b) Suspension will result in one or more of the following:~~
  - ~~(1) The Agency may withhold payments, wholly or partly, to the contractor during the period of suspension.~~

- ~~(2) The Agency may refuse to accept a bid, offer, application, or proposal from, or to award a contract to, the affected contractor during the period of suspension.~~
- ~~(3) The Agency may remove existing customers referred from or cease referring customers to a suspended contractor and may transfer existing customers to other contractors.~~
- ~~(c) If the Agency determines that the underlying reasons for suspension have been resolved in favor of the respondent, the Agency must, if applicable:~~
  - ~~(1) pay the withheld payments for services that were provided during the suspension and that met the terms of an existing contract; and~~
  - ~~(2) resume contract payments and customer referrals.~~
- ~~(d) If the Agency determines that the underlying reasons for suspension are not resolved in favor of the respondent, the Agency shall institute debarment proceedings.~~
- ~~(e) In accordance with terms specified by the Agency, an individual whose contract has been placed in suspension may not:~~
  - ~~(1) receive a contract;~~
  - ~~(2) submit an offer, bid, application, or proposal for a contract; or~~
  - ~~(3) provide goods or services to Agency customers either directly or indirectly while working for an Agency contractor.~~
- ~~(f) A suspension may be applied against an individual, an entire legal entity, or a specified part of a legal entity.~~

**~~§858.13. Evidence for Debarment.~~**

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

- ~~(1) The actual or potential harm or impact that results or may result from the wrongdoing.~~
- ~~(2) The frequency of incidents and/or duration of the wrongdoing.~~
- ~~(3) Whether there is a pattern or history of wrongdoing.~~
- ~~(4) Whether an individual is or has been disqualified by an agency of the federal government or has not been allowed to participate in state or local contracts or assistance agreements based on conduct similar to one or more of the causes~~

for debarment specified in this part.

- ~~(5) Whether and to what extent the individual planned, initiated, or carried out the wrongdoing.~~
- ~~(6) Whether the individual accepted responsibility for the wrongdoing and recognized the seriousness of the misconduct that led to the cause for debarment.~~
- ~~(7) Whether the individual paid or agreed to pay all criminal, civil, and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and has made or agreed to make full restitution.~~
- ~~(8) Whether the individual cooperated fully with the government agencies during the investigation and with any court or administrative action. In determining the extent of cooperation, the Agency may consider when the cooperation began and whether the individual disclosed all pertinent information known to the individual.~~
- ~~(9) Whether the wrongdoing was pervasive within the individual's organization.~~
- ~~(10) The types of positions held by the individuals involved in the wrongdoing.~~
- ~~(11) Whether the individual's organization took appropriate corrective action or remedial measures.~~
- ~~(12) Whether the individual's principals tolerated the offense.~~
- ~~(13) Whether the individual brought the activity cited as a basis for the debarment to the attention of the appropriate Agency representative in a timely manner.~~
- ~~(14) Whether the individual fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the Agency.~~
- ~~(15) Whether the individual had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.~~
- ~~(16) Whether the individual took appropriate disciplinary action against the individuals responsible for the activity that constitutes the cause for debarment.~~
- ~~(17) Whether the individual had adequate time to eliminate the circumstances within the individual's organization that led to the cause for the debarment.~~
- ~~(18) Other factors related to the contractor's required performance under the~~

~~contract that the Agency determines are appropriate to the circumstances of a particular case.~~

#### **~~§858.14. Notice for Debarment or Suspension.~~**

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

- ~~(1) the grounds for the action;~~
- ~~(2) the length of the debarment;~~
- ~~(3) the conditions that might cause a suspension to be released;~~
- ~~(4) a statement explaining the effect of the suspension or debarment; and~~
- ~~(5) a statement as to whether the suspension or debarment is in effect for all Agency contracts or just for a particular Agency contract.~~

#### **§858.10. Suspension of Contractors.**

(a) General Principles. A suspension is a temporary action taken by the Agency against a contractor. The Agency may suspend a contractor or individual when there is a reasonable suspicion of conduct that may constitute a ground for adverse action or debarment, including, but not limited to, suspected fraud, waste, or abuse; a failure to follow the terms of a contract; or a failure to comply with Agency rules, policies, and procedures. A suspension is in effect until an investigation, hearing, or trial is concluded and the Agency determines the contractor's future ability to contract or subcontract with the Agency.

(b) Scope of Suspension. The Agency may apply a suspension against an individual, an entire legal entity, or a specified part of a legal entity. The Agency may impute the conduct of an individual who controls or serves the contractor through contract, employment, ownership interest, or other demonstrable way, even though the assigned conduct being imputed occurred when the individual was not associated with the contractor.

(c) Notice of Suspension. Written notice of a suspension must include:

- (1) the grounds for the action;
- (2) the conditions that might cause a suspension to be released;
- (3) a statement explaining the effect of the suspension; and
- (4) a statement as to whether the suspension is in effect for all Agency contracts or for a particular Agency contract.

(d) Results of Suspension. Suspension will result in one or more of the following:

- (1) The Agency may withhold payments, wholly or partly, to the contractor during the period of suspension.
- (2) The Agency may refuse to accept a bid, offer, application, or proposal from, or award a contract to, the affected contractor during the period of suspension.
- (3) The Agency may cease referring customers to a suspended contractor, remove existing customers referred to a suspended contractor, or transfer existing customers to other contractors.
- (4) Unless the suspension notice specifies a more limited scope (such as only ceasing new referrals), a suspended contractor or individual is immediately prohibited from:
  - (A) receiving any new Agency contract;
  - (B) submitting an offer, bid, application, or proposal for any Agency contract;
  - (C) providing goods or services to Agency customers in any capacity (including as an employee, subcontractor, agent, or volunteer) for or on behalf of any other Agency contractor; and
  - (D) acting as a principal or representative for, or otherwise benefiting financially from, any other Agency contract.

(e) Resolution of Suspension.

- (1) If the Agency determines that the underlying reasons for suspension have been resolved in favor of the respondent, the Agency must, if applicable:
  - (A) pay the withheld payments for services that were provided during the suspension and that met the terms of an existing contract; and
  - (B) resume contract payments and customer referrals.
- (2) If the Agency determines that the underlying reasons for the suspension are not resolved in favor of the respondent, the Agency may institute debarment proceedings or take other adverse action against the respondent.

#### **§858.11. Debarment of Contractors.**

(a) General Principles. Debarment is a serious action taken by the Agency to exclude a

contractor from participating in Agency contracts for a specified period and protect the Agency's interests.

(b) Causes for Debarment. The Agency may debar a contractor for various reasons, including:

(1) being adjudicated as guilty, pleading guilty, pleading nolo contendere, or receiving a deferred adjudication in a criminal court relating to:

(A) obtaining, attempting to obtain, or performing a public or private contract or subcontract;

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

(C) using or possessing controlled or illegal substances, or committing other drug-related offenses;

(D) violating federal antitrust statutes arising from submitting bids or proposals;

(E) committing an offense involving physical or sexual abuse or neglect; or

(F) committing an offense involving the direct support or promotion of human trafficking;

(2) being debarred from contracting by any unit of the federal or state government;

(3) violating Agency contract provisions, including failing to perform according to the terms, conditions, and specifications, or within the time specified, in an Agency contract, including, but not limited to:

(A) failing to abide by applicable federal and state statutes, rules, regulations, policies, and procedures, such as those regarding individuals with disabilities and those regarding civil rights; or

(B) having a record of failure to perform or of unsatisfactory performance according to the terms of one or more contracts or subcontracts, if that failure or unsatisfactory performance has occurred within five years preceding the determination to debar. Failure to perform and unsatisfactory performance include, but are not limited to:

(i) failing to correct contract performance deficiencies after receiving

- written notice about them from the Agency or its authorized agents;
- (ii) failing to repay or make and complete arrangements satisfactory to the Agency to repay identified improper payments or assessed liquidated damages or penalties;
  - (iii) failing to meet standards that are required for licensure or certification, or that are required by state or federal law, Agency rules, or Agency policy;
  - (iv) failing to execute contract amendments required by the Agency;
  - (v) billing for services or goods not provided;
  - (vi) submitting a false report or misrepresentation that may increase individual or statewide rates or fees;
  - (vii) charging customers fees contrary to Agency rules or policy;
  - (viii) failing to notify and reimburse the Agency or its agents for services that the Agency paid for when the contractor received reimbursement from a liable third party;
  - (ix) failing to disclose or make available Contractor-required records to the Agency or its representatives (including appropriate federal and state agencies);
  - (x) failing to provide and maintain services within standards required by statute, regulations, or contract; or
  - (xi) violating the Texas Human Resources, Government, or Labor Code provisions applicable to the contractor or any rule or regulation issued under the referenced codes;
- (4) submitting an offer, bid, proposal, or application that contains a false statement or misrepresentation or omits pertinent facts or documents that are material to the procurement;
- (5) engaging in an abusive or neglectful practice that results in or could result in death or injury to the customer served by the contractor;
- (6) knowingly and willfully using a debarred individual as an employee, independent contractor, or agent associated with any service provided in performance of a contract with the Agency;

- (7) failing to pay a substantial debt or debts, including disallowed costs and overpayments or improper payments owed to any federal or state agency instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or
- (8) any other cause of a serious or compelling nature that affects a contractor's present or future ability to perform under the contract or that presents an imminent risk of harm to or liability for the Agency.

(c) Period and Scope of Debarment.

(1) Period.

- (A) Debarment shall be imposed for a period commensurate with the seriousness of the cause(s).
- (B) Generally, debarment should not exceed three years. Debarment may exceed three years if:
  - (i) the reason for debarment is particularly egregious or involves fraud, in which case the debarment will not exceed five years;
  - (ii) the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, in which case the period of debarment will not exceed five years; or
  - (iii) the individual or contractor is debarred under §858.11(b)(1) of this chapter for a crime against an Agency customer or the Agency, the period of debarment may be permanent.
- (C) The Agency may extend the debarment for an additional period if the Agency determines that an extension is necessary to protect the Agency's interest. However, debarment may not be extended solely upon the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined necessary, the same procedures to impose an initial debarment shall be followed to extend the debarment.
- (D) The period of debarment shall begin on the effective date stated in the final debarment notice.
- (E) The period of debarment shall be reduced by the duration of any preceding suspension, provided the suspension prohibited the contractor from providing any goods or services to Agency customers and from submitting claims for payment for work performed on or after the

suspension's effective date. Suspensions that only limit the scope of business, such as a freeze on new referrals, shall not be credited toward the debarment period.

(2) Scope.

(A) The Agency may impute the conduct of an individual who controls or serves the contractor through contract, employment, ownership interest, or other demonstrable way, even though the conduct being imputed occurred when the individual was not associated with the contractor.

(B) A single occurrence of a violation may result in debarment.

(C) Nothing in this provision shall be construed in a manner that would prevent a debarred individual, who is also a VR customer, from receiving VR services as a VR customer.

(d) Results of Debarment. The prohibitions resulting from a debarment apply to the full extent of the scope defined in the debarment notice. Unless otherwise specified in the notice, a debarred individual or entity is prohibited from:

(1) submitting an offer, bid, application, or proposal for any Agency contract;

(2) receiving or being awarded any new Agency contract;

(3) continuing to perform work under, or retain, any existing Agency contract after the effective date of the debarment;

(4) providing goods or services to Agency customers, either directly or indirectly, in any capacity (including as an employee, agent, consultant, subcontractor, or partner) for or on behalf of any other Agency contractor;

(5) billing for or receiving payment from the Agency for any goods or services provided on or after the effective date of the debarment;

(6) acting as a principal or representative for any other entity in its dealings with the Agency; and

(7) including costs associated with a debarred individual (such as salary, fringe benefits, or overhead) in any cost report or other document submitted to the Agency for the purpose of establishing or adjusting a payment rate or fee.

(e) Evidence for Debarment. In making a debarment decision, the Agency may consider factors such as:

(1) The actual or potential harm or impact that results or may result from the

wrongdoing.

- (2) The frequency, duration, or pattern of the wrongdoing.
- (3) Whether an individual or contractor is or has been disqualified by an agency of the federal government or has been banned from participating in state or local contracts or assistance agreements based on similar conduct.
- (4) The individual or contractor's role in planning, initiating, or carrying out the wrongdoing.
- (5) Whether the individual or contractor accepted responsibility and recognized the seriousness of the misconduct.
- (6) Whether the individual or contractor has made or agreed to make full restitution and paid or agreed to pay all criminal, civil, and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government.
- (7) Whether the individual or contractor cooperated fully with the government agencies during the investigation and with any court or administrative action. In determining the extent of cooperation, the Agency may consider when the cooperation began and whether the individual disclosed all pertinent information known to the individual.
- (8) The types of positions held by the individuals or contractors involved in the wrongdoing.
- (9) Whether the contractor's organization took appropriate corrective action or remedial measures, including disciplinary action against responsible parties.
- (10) Whether the individual or contractor brought the activity cited as a basis for the debarment to the attention of the appropriate Agency representative in a timely manner.
- (11) Whether the individual or contractor fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the Agency.
- (12) Whether the individual or contractor had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.
- (13) Whether the individual or contractor had adequate time to eliminate the circumstances within the individual's organization that led to the cause for the debarment.

(14) Other factors related to the contractor's performance that the Agency determines are appropriate to the circumstances of the case.

(f) Notice for Debarment. Written notices of debarment must include:

(1) the grounds for the action;

(2) the effective start and end dates of the debarment;

(4) a statement explaining the effect of the debarment; and

(5) a statement as to whether the debarment is in effect for all Agency contracts or for a particular Agency contract.

### **§858.15. Appeals.**

- (a) A contractor may appeal an initial adverse action rendered by the Agency under §858.9 of this chapter in writing by hand delivery, mail, common carrier, facsimile (fax) transmission, electronic mail (email), or other method approved by the Agency, ~~in writing. A contractor shall only submit an appeal by hand delivery, mail, or common carrier to the Agency~~ as directed on the Contractor Notice of Appeal Rights (VR-1309). An appeal sent by unapproved methods or to a different address will not be considered by the Agency as a valid appeal. A contractor cannot appeal escalating adverse actions taken by the Agency based on a contractor's failure to correct or remedy an initial adverse action.
- (b) The Agency's initial adverse action is final for all purposes unless the contractor files an appeal not later than 28 calendar days after the date on which the initial adverse action is mailed, sent by electronic mail, or sent by facsimile to the contractor. The timeliness of an appeal is subject to the rules and procedures set out in the Unemployment Insurance rules ~~in at 40-TAC~~ 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.
- (c) To be considered, the appeal must include the following:
- (1) A statement of facts describing how an Agency decision, action, or inaction deviated from contract terms, published policy, or state or federal laws or regulations;
  - (2) The contractor's claim, including pertinent contract sections;
  - (3) A statement of the issue or issues in dispute;
  - (4) A brief statement about why the Agency's initial adverse action is wrong;

- (5) All evidence and documentation the contractor intends to rely on to support the appeal; and ~~Copies of evidence or documentation supporting the appeal; and~~
  - (6) The action requested.
- (d) The contractor may supplement its appeal after the appeal is ~~being~~-perfected but before the Agency renders ~~rendering~~-a decision on the merits of the appeal.
- (e) A contractor may be represented by an attorney or designated representative.
- (f)(e) As part of the appeal, the contractor may also request a meeting with the Agency. Whether a meeting will be granted is at the Agency's discretion. The meeting request should include a description of any special accommodations needed for the 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.
- (g)(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.
- (h)(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.
- (i) Effect of Appeal. The filing of an appeal does not stay the effective date of the adverse action. The adverse action shall remain in effect during the appeal process unless the Agency, at its sole discretion, grants a stay in writing.

#### **§858.16. Request for Reconsideration.**

- (a) The contractor may submit a request for reconsideration in writing 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 contractor's request for reconsideration shall be submitted to the Agency by hand delivery, mail, common carrier, facsimile (fax) transmission, electronic mail (email), or other method approved by the Agency, 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 ~~in~~ 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~~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~~there is a compelling reason why the evidence was not presented earlier;  
and
  - (3) ~~There~~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.