

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

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

5 **§858.1. Definitions.**
6

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

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

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

12 *The provisions of this §858.1 adopted to be effective July 6, 2020, 45 TexReg 4532*

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15
16 **§858.2. Noncompetitive Open Enrollment Solicitation.**

17
18 General. The Agency may acquire goods or services through a noncompetitive open
19 enrollment solicitation and enter into enrollment contracts with qualified contractors.
20

- 21 (1) An open enrollment solicitation must be conducted in an open and fair manner
22 that reasonably provides interested, qualified contractors with an equal
23 opportunity to obtain a contract or do business with the Agency.
24
25 (2) The Agency may consider past performance when determining whether to
26 award a contract to an applicant.
27

28 *The provisions of this §858.2 adopted to be effective July 6, 2020, 45 TexReg 4532*

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32 **§858.3. General Requirements for Contracting.**

- 33
34 (a) To contract with the Agency for VR goods and services, the contractor must:
35
36 (1) ensure that:
37
38 (A) staff members meet all qualification requirements established by Agency
39 policy and regulations;
40
41 (B) all staff members meet minimum qualifications at application and
42 throughout the term of the contract;
43
44 (C) staff credentials supporting qualifications are on file at the time of hire
45 and maintained throughout the term of the contract; and
46

- 1 (D) staff credentials are made available to Agency staff upon request;
2
3 (2) provide for such fiscal control and fund accounting as may be necessary to
4 ensure proper disbursement and accounting of funds provided by the Agency
5 in accordance with Agency policies and maintain financial and other contract
6 records according to recognized fiscal and accounting practices such as the
7 Generally Accepted Accounting Principles (GAAP);
8
9 (3) certify on or before the effective date of the contract that the contractor has and
10 will maintain adequate operating funds for conducting business;
11
12 (4) have and maintain adequate staff to provide services on the effective date of
13 the contract;
14
15 (5) notify the Agency in writing of changes to contact information according to the
16 requirements of the contract. Unless otherwise specified in the contract, the
17 contractor must notify the Agency:
18
19 (A) within 10 calendar days after any address change, including of the
20 location of the contractor's office, physical address, or mailing address;
21
22 (B) immediately of any change in administrator or director; and
23
24 (C) within seven working days of any change in the contact telephone
25 number designated in the contract;
26
27 (6) report any suspected violation of rules or laws to the appropriate investigative
28 authority. This includes reporting to the Agency any abuse, neglect, or
29 exploitation.
30
31 (b) A contractor may not offer, give, or agree to give an Agency employee anything of
32 value.
33
34 (c) A contractor or applicant may not engage in any activity that presents a real or
35 apparent conflict of interest and must provide written attestation that no real or
36 apparent conflicts of interest exist before execution of a contract with the Agency.
37
38 (d) Pursuant to Texas Government Code §572.054(b), certain Agency employees may
39 not represent or receive compensation from any individual concerning any
40 contractual matter in which the former employee participated during his or her
41 employment with the state.
42
43 (e) The Agency may choose not to enter into a contract:
44

- 1 (1) when, in the Agency's opinion, the contractor or a controlling party has a
2 documented, unsatisfactory history in contracting with the Agency or with
3 another state agency;
4
- 5 (2) if the contractor:
6
- 7 (A) subcontracts any direct care services without specific authorization from
8 the Agency; and/or
9
- 10 (B) assigns or transfers the contract without the Agency's prior written
11 approval.
12
- 13 (f) The Agency may obtain criminal history information from the Texas Department of
14 Public Safety and may use this information in awarding and administering Agency
15 contracts. When the Agency uses the information, the terms and conditions of use are
16 included in the affected contracts.
17
- 18 (g) Goods or services purchased or reimbursed by the Agency may be inspected or
19 monitored at the discretion of the Agency.
20
- 21 (h) The Agency may require corrective action, remove or reassign active customers to
22 other contractors for services, and/or impose an adverse action against a contractor
23 for failure to comply with the terms of the contract and/or Agency rules, policies,
24 and procedures.
25
- 26 (i) A contractor shall participate in orientation relating to Agency contract requirements
27 before providing goods or services under a contract for the first time.
28
- 29 (j) A contractor shall ensure that any facility in which services are provided includes
30 individuals able to communicate in the native language of applicants, recipients of
31 service, and other eligible individuals who have limited English proficiency.
32
- 33 (k) Contractors shall take affirmative action to employ and advance in employment
34 qualified individuals with disabilities.
35

36 *The provisions of this §858.3 adopted to be effective June 17, 2015, 40 TexReg 3638;*
37 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
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42 **§858.4. Complaints.**
43

44 Upon request from a customer, the contractor must provide the customer with the
45 appropriate name, mailing address, and telephone number to direct complaints to the

1 Agency. The contractor must verify that the name, mailing address, and telephone
2 number it provides to the customer are current and correct.

3
4 *The provisions of this §858.4 adopted to be effective June 17, 2015, 40 TexReg 3638;*
5 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
6 *2016, 41 TexReg 6773; amended to be effective July 6, 2020, 45 TexReg 4532*

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10 **§858.7. Contract Monitoring.**

- 11
12 (a) Any service purchased or reimbursed by the Agency may be monitored at the
13 discretion of the Agency.
- 14
15 (b) The Agency may conduct compliance monitoring reviews of the contractor's
16 services to determine if the contractor is in compliance with the contract and with
17 program rules and requirements. These reviews are conducted at the location where
18 the contractor is providing the services unless the Agency specifies a different
19 location. The Agency shall assess contractor performance based on contract
20 standards.
- 21
22 (c) The Agency may expand a compliance monitoring review period or any requested
23 review sample at any time.
- 24
25 (d) The Agency may conduct a fiscal monitoring review:
- 26
27 (1) in conjunction with a compliance monitoring review;
- 28
29 (2) independent of a compliance monitoring review;
- 30
31 (3) when a contract is terminated;
- 32
33 (4) as a result of a complaint; or
- 34
35 (5) at other times, as the Agency considers necessary.
- 36
37 (e) The Agency may use sampling methods in monitoring and auditing contracts.
- 38
39 (f) The contractor has the burden of proof in establishing entitlement to payments made
40 under the contract.

41
42 *The provisions of this §858.7 adopted to be effective June 17, 2015, 40 TexReg 3638;*
43 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
44 *2016, 41 TexReg 6773; amended to be effective July 6, 2020, 45 TexReg 4532*

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2 **§858.8. Corrective Action Plan.**
3

4 If requested by the Agency, the contractor shall prepare and implement a corrective
5 action plan to address and remedy all deficiencies or violations in a timely manner in
6 response to findings of deficiencies by the Agency or other federal or state oversight
7 authorities. The corrective action plan must be acceptable to the Agency. The Agency
8 may subsequently monitor and document the contractor's compliance with the corrective
9 action plan as accepted.

10
11 *The provisions of this §858.8 adopted to be effective June 17, 2015, 40 TexReg 3638;*
12 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
13 *2016, 41 TexReg 6773; amended to be effective July 6, 2020, 45 TexReg 4532*

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17 **§858.9. Adverse Actions.**
18

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

- 22
- 23 (1) the Agency's determination that one or more customers' health and safety has
24 been or is jeopardized;
 - 25
 - 26 (2) the contractor's failure to submit an acceptable written corrective action plan as
27 requested by the Agency or failure to comply with an accepted corrective
28 action plan;
 - 29
 - 30 (3) the contractor's failure to follow an agreed-upon audit resolution payment plan;
 - 31
 - 32 (4) the contractor's failure to submit an acceptable cost report, if applicable;
 - 33
 - 34 (5) the contractor's failure to comply with the contract requirements;
 - 35
 - 36 (6) the contractor's failure to maintain a current required license or the contractor
37 allowing the expiration of any required license, if applicable;
 - 38
 - 39 (7) the contractor's relocation to a new facility address that does not have the
40 appropriate license, if applicable;
 - 41
 - 42 (8) the contractor's exclusion from contracting with the Agency or any health and
43 human services program;
 - 44
 - 45 (9) debarment or exclusion from a federal program;
 - 46

- 1 (10) a validated report or reports of abuse, neglect, or exploitation where an owner,
2 employee, or volunteer who has direct access to customers is the perpetrator
3 of, or enables, the abuse, neglect, or exploitation of a customer;
4
5 (11) substantiated claims of fraud against a contractor; and
6
7 (12) any other cause of so serious or compelling a nature that it affects the
8 contractor's ability to perform under the contract or presents an imminent risk
9 of harm to or liability for the Agency.

10
11 (b) The Agency may take the following adverse actions:

- 12
13 (1) Recoup money that the contractor owes as a result of overpayments or other
14 billing irregularities;
15
16 (2) Place a vendor hold on one or all the contractor's contracts, which must be
17 released when the Agency determines that the contractor has resolved the issue
18 or issues causing the hold;
19
20 (3) Deny all or part of a claim;
21
22 (4) Direct the contractor to suspend or terminate a subcontractor's participation in
23 the provision of goods or services;
24
25 (5) Terminate a contract for cause before its expiration date;
26
27 (6) Suspend the contractor's right to conduct business with the Agency;
28
29 (7) Debar the contractor's right to contract or conduct business with the Agency, in
30 any capacity, for a specified period of time; or
31
32 (8) Take any other less severe action or actions that the Agency determines
33 necessary to ensure the contractor's compliance with the underlying contract,
34 after considering the circumstances of a particular case.
35

36 *The provisions of this §858.9 adopted to be effective June 17, 2015, 40 TexReg 3638;*
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38 *2016, 41 TexReg 6773; amended to be effective July 6, 2020, 45 TexReg 4532*

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41
42 **§858.10. Debarment and Suspension of Contractors.**

- 43
44 (a) Debarment and suspension apply to contracts.
45

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

23 *The provisions of this §858.10 adopted to be effective June 17, 2015, 40 TexReg 3638;*
24 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
25 *2016, 41 TexReg 6773; amended to be effective July 6, 2020, 45 TexReg 4532*

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29 **§858.11. Causes and Conditions of Debarment.**

- 30
- 31 (a) The Agency may debar a contractor for reasons including the following:
- 32
- 33 (1) Being adjudicated as guilty, pleading guilty, pleading nolo contendere, or
34 receiving a deferred adjudication in a criminal court relating to:
- 35
- 36 (A) Obtaining, attempting to obtain, or performing a public or private
37 contract or subcontract;
- 38
- 39 (B) Engaging in embezzlement, theft, forgery, bribery, falsification or
40 destruction of records, fraud, receipt of stolen property, making false
41 statements or claims, tax evasion, or any other offense indicating moral
42 turpitude or a lack of business integrity or honesty;
- 43
- 44 (C) Use or possession of controlled or illegal substances, or other drug-
45 related offense;
- 46

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

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

16
17 (c) A single occurrence of a violation may result in debarment or suspension.

18
19 *The provisions of this §858.11 adopted to be effective June 17, 2015, 40 TexReg 3638;*
20 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
21 *2016, 41 TexReg 6773; amended to be effective July 6, 2020, 45 TexReg 4532*

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

- 26
27 (a) The Agency may suspend a contract whenever grounds for debarment exist.
28
29 (b) Suspension will result in one or more of the following:
30
31 (1) The Agency may withhold payments, wholly or partly, to the contractor during
32 the period of suspension.
33
34 (2) The Agency may refuse to accept a bid, offer, application, or proposal from, or
35 to award a contract to, the affected contractor during the period of suspension.
36
37 (3) The Agency may remove existing customers referred from or cease referring
38 customers to a suspended contractor and may transfer existing customers to
39 other contractors.
40
41 (c) If the Agency determines that the underlying reasons for suspension have been
42 resolved in favor of the respondent, the Agency must, if applicable:
43
44 (1) pay the withheld payments for services that were provided during the
45 suspension and that met the terms of an existing contract; and
46

1 (2) resume contract payments and customer referrals.
2

3 (d) If the Agency determines that the underlying reasons for suspension are not resolved
4 in favor of the respondent, the Agency shall institute debarment proceedings.
5

6 (e) In accordance with terms specified by the Agency, an individual whose contract has
7 been placed in suspension may not:
8

9 (1) receive a contract;

10 (2) submit an offer, bid, application, or proposal for a contract; or
11

12 (3) provide goods or services to Agency customers either directly or indirectly
13 while working for an Agency contractor.
14

15
16 (f) A suspension may be applied against an individual, an entire legal entity, or a
17 specified part of a legal entity.
18

19 *The provisions of this §858.12 adopted to be effective June 17, 2015, 40 TexReg 3638;*
20 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
21 *2016, 41 TexReg 6773; amended to be effective July 6, 2020, 45 TexReg 4532*
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25 **§858.13. Evidence for Debarment.**

26
27 In making a debarment decision, the Agency may consider the following factors:
28

29 (1) The actual or potential harm or impact that results or may result from the
30 wrongdoing.
31

32 (2) The frequency of incidents and/or duration of the wrongdoing.
33

34 (3) Whether there is a pattern or history of wrongdoing.
35

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

41 (5) Whether and to what extent the individual planned, initiated, or carried out the
42 wrongdoing.
43

44 (6) Whether the individual accepted responsibility for the wrongdoing and
45 recognized the seriousness of the misconduct that led to the cause for
46 debarment.

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- (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.

42 *The provisions of this §858.13 adopted to be effective June 17, 2015, 40 TexReg 3638;*
43 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
44 *2016, 41 TexReg 6773; amended to be effective July 6, 2020, 45 TexReg 4532*

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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 or just for a particular Agency contract.
16

17 *The provisions of this §858.14 adopted to be effective June 17, 2015, 40 TexReg 3638;*
18 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
19 *2016, 41 TexReg 6773; amended to be effective July 6, 2020, 45 TexReg 4532*
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23 **§858.15. Appeals.**
24

- 25 (a) A contractor may appeal an initial adverse action rendered by the Agency under
26 §858.9 of this chapter by hand delivery, mail, common carrier, facsimile (fax)
27 transmission, or other method approved by the Agency in writing. A contractor shall
28 only submit an appeal by hand delivery, mail, or common carrier to the Agency as
29 directed on the Contractor Notice of Appeal Rights (VR 1309). An appeal sent by
30 unapproved methods or to a different address will not be considered by the Agency
31 as a valid appeal.
32
33 (b) The Agency's initial adverse action is final for all purposes unless the contractor files
34 an appeal not later than 28 calendar days after the date on which the initial adverse
35 action is mailed, sent by electronic mail, or sent by facsimile to the contractor. The
36 timeliness of an appeal is subject to the rules and procedures set out in the
37 Unemployment Insurance rules at 40 TAC Chapter 815, except to the extent that
38 such sections are clearly inapplicable or contrary to provisions set out under these
39 Chapter 858 rules or the contract between the parties.
40
41 (c) To be considered, the appeal must include the following:
42
43 (1) A statement of facts describing how an Agency decision, action, or inaction
44 deviated from contract terms, published policy, or state or federal laws or
45 regulations;
46

- (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) Copies of evidence or documentation supporting the appeal; and
- (6) The action requested.

- (d) The contractor may supplement its appeal after being perfected but before the Agency rendering a decision on the merits.
- (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.
- (f) The Agency will notify the contractor whether its appeal has been perfected and has met the requirements in subsection (c) of this section for consideration on its merits. If the appeal does not meet the requirements, the appeal will be denied, and the initial adverse action will be the Agency's final decision.
- (g) An Agency appeal decision becomes final 14 days after the date the appeal decision is mailed, unless the contractor files a written request for reconsideration before that date.

The provisions of this §858.15 adopted to be effective June 17, 2015, 40 TexReg 3638; duplicated effective September 1, 2016, as published in the Texas Register September 2, 2016, 41 TexReg 6773; amended to be effective July 6, 2020, 45 TexReg 4532

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§858.16. Request for Reconsideration.

- (a) The contractor may submit a request for reconsideration following the Agency's issuance of the appeal decision by hand delivery, mail, common carrier, facsimile (fax) transmission, or other method approved by the Agency in writing:
 - (1) A request for reconsideration shall only be hand delivered, mailed, or sent by common carrier to the Agency as directed on the Contractor Notice of Rights (VR 1309). A request for reconsideration sent by unapproved methods or to a

1 different address will not be considered a valid request for reconsideration by
2 the Agency.

3
4 (2) The timeliness of a request for reconsideration is subject to the rules and
5 procedures set out in the Unemployment Insurance rules at Chapter 815 of this
6 title, except to the extent that such sections are clearly inapplicable or contrary
7 to provisions set out under these Chapter 858 rules or the contract between the
8 parties.

9
10 (b) A request for reconsideration shall not be granted unless each of the following three
11 criteria are met:

12
13 (1) there is an offering of new evidence, which was not presented as part of the
14 original appeal pursuant to §858.15 of this chapter;

15
16 (2) there is a compelling reason why the evidence was not presented earlier; and

17
18 (3) there is a specific explanation of how consideration of the evidence would
19 change the outcome of the decision.

20
21 (c) The Agency's decision on the request for reconsideration is the final decision of the
22 Agency.

23
24 *The provisions of this §858.16 adopted to be effective June 17, 2015, 40 TexReg 3638;*
25 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
26 *2016, 41 TexReg 6773; amended to be effective July 6, 2020, 45 TexReg 453*

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