

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

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

9 The Texas Workforce Commission (TWC) adopts the following new sections to Chapter 858,  
10 relating to Vocational Rehabilitation Services Contract Management Requirement, without  
11 changes, as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1202):  
12

13 §858.1 and §858.2  
14

15 TWC adopts amendments to the following sections of Chapter 858, relating to Vocational  
16 Rehabilitation Services Contract Management Requirement, *without* changes, as published in the  
17 February 21, 2020, issue of the *Texas Register* (45 TexReg 1202):  
18

19 §§858.3, 858.4, and §858.7 - 858.16  
20

21 TWC adopts the repeal of the following sections of Chapter 858, relating to Vocational  
22 Rehabilitation Services Contract Management Requirement, *without* changes, as published in the  
23 February 21, 2020, issue of the *Texas Register* (45 TexReg 1202):  
24

25 §§858.1, 858.2, 858.5, and 858.6  
26

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

28 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**  
29

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

31 The purpose of the adopted Chapter 858 rule change is to align the chapter with TWC's operation  
32 of the Vocational Rehabilitation (VR) services program. Texas Labor Code §351.002 transferred  
33 the administration of VR services from the Texas Department of Assistive and Rehabilitative  
34 Services (DARS) to TWC, effective September 1, 2016.  
35

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

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43 are needed to integrate and align overlapping sections and update outdated terms and procedures to  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

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

## 10 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

11 (Note: Minor editorial changes are made that do not change the meaning of the rules and,  
12 therefore, are not discussed in the Explanation of Individual Provisions.)  
13

### 14 **TWC adopts the following amendments to Chapter 858:**

#### 15 **§858.1. Purpose and Applicability**

16 Section 858.1 is repealed because the language on purpose and applicability is unnecessary and  
17 inconsistent with TWC's current rulemaking framework.  
18  
19

#### 20 **§858.1. Definitions**

21 New §858.1 updates and retains the applicable definitions from §858.2, which is currently  
22 proposed for repeal, to reflect TWC's current operation of the VR program.  
23

#### 24 **§858.2. Definitions**

25 Section 858.2 is repealed to accommodate reorganization of the subchapter.  
26

#### 27 **§858.2. Noncompetitive Open Enrollment Solicitation**

28 New §858.2 adds new language from the proposed repeal of Chapter 857, that authorizes the use  
29 of open enrollment solicitations.  
30

#### 31 **§858.3. General Requirements for Contracting**

32 Section 858.3 is amended to remove, update, combine, or add language and provisions accounted  
33 for in the standard terms and conditions of VR services contracts, the VR Standards for Providers  
34 on TWC's website, and TWC's contracting policies and procedures.  
35

#### 36 **§858.4. Complaints**

37 Section 858.4 is amended to add language specifying that TWC is the administrative agency for  
38 directing complaints and requiring contractors to verify that the information they provide to  
39 customers for directing complaints is current and accurate.  
40

#### 41 **§858.5. Record Requirements**

42 Section 858.5 is repealed; retention and production of contractor records is required and covered  
43 by TWC's Financial Manual for Grants & Contracts Appendix K: Record Retention & Access  
44 Requirements.  
45

1 **§858.6. Access to Contractor Facilities and Records**

2 Section 858.6 is repealed. Access to contractor records is required and covered by the Financial  
3 Manual for Grants & Contracts Appendix K: Record Retention & Access Requirements.  
4

5 **§858.7. Contract Monitoring**

6 Section 858.7 is amended to update terminology and to highlight contractor responsibility  
7 regarding the monitoring and review of contracts under this chapter.  
8

9 **§858.8. Corrective Action Plan**

10 Section 858.8 is amended to update terminology and to highlight contractor responsibility  
11 regarding a corrective action plan. Language has been added to require that the corrective action  
12 plan be acceptable to TWC and that contractors remedy all deficiencies or violations in a timely  
13 manner.  
14

15 **§858.9. Adverse Actions**

16 Section 858.9 is amended to update terminology and to add language that includes substantiated  
17 claims of fraud against a contractor and failure to submit a corrective action plan as reasons for  
18 which TWC may impose adverse actions against a contractor. Language has been modified for  
19 clarity and consistency and to reflect TWC's current operation of the VR services program.  
20

21 **§858.10. Debarment and Suspension of Contractors**

22 Section 858.10 is amended to update terminology and clarify the general length of debarment.  
23 Subsection (d) has been modified to clarify when TWC may suspend contracts.  
24

25 **§858.11. Causes and Conditions of Debarment**

26 Section 858.11 is amended to remove language stating that paragraph (3)(B) applies only to  
27 actions occurring after the effective date of these rules. Additionally, language has been updated  
28 for clarity and consistency with existing contract language and to reflect TWC's current  
29 operation of the VR services program.  
30

31 **§858.12. Causes and Results of Suspension**

32 Section 858.12(b) is amended to update terminology and to clarify the possible results of  
33 suspension. Additionally, language has been updated to reflect TWC's current operation of the  
34 VR services program.  
35

36 **§858.13. Evidence for Debarment**

37 Section 858.13 is amended to update terminology to reflect TWC's current operation of the VR  
38 services program.  
39

40 **§858.14. Notice for Debarment or Suspension**

41 Section 858.14 is amended to update terminology to reflect TWC's current operation of the VR  
42 services program.  
43

44 **§858.15. Appeals**

45 Section 858.15(b) is amended to update terminology and to clarify that a notice of adverse action  
46 rendered by TWC is final for all purposes unless the contractor files an appeal not later than 28

1 calendar days after the date the initial adverse action is sent to the contractor. Additionally,  
2 language has been added giving TWC the discretion to grant a contractor's request for an  
3 extension of the period in which to file a notice of appeal of an adverse action upon showing of  
4 good cause. The term "appellant" has been replaced with the term "contractor."

5  
6 **§858.16. Request for Reconsideration**

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

9  
10 No comments were received.

11  
12 TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be  
13 within TWC's legal authority to adopt.

14  
15 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC  
16 with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective  
17 administration of TWC services and activities.

18  
19 The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301, 302, 351, and  
20 352.

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

5  
6 ~~SUBCHAPTER D. VOCATIONAL REHABILITATION SERVICES CONTRACT~~  
7 ~~MANAGEMENT REQUIREMENT~~  
8  
9

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

11  
12 ~~The purpose of this subchapter is to establish general contracting rules for consumer~~  
13 ~~goods and services contracts with the Texas Department of Assistive and Rehabilitative~~  
14 ~~Services (DARS).~~

15  
16 ~~§858.2. Definitions.~~

17  
18 ~~The following words and terms, when used in this subchapter have the following~~  
19 ~~meanings, unless the context clearly indicates otherwise.~~

20  
21 ~~(1) Amendment—A formal revision or addition to a contract.~~

22  
23 ~~(2) Bid—An offer to contract with the state submitted in response to a bid~~  
24 ~~invitation.~~

25  
26 ~~(3) Commissioner—The Chief Executive Officer of the Texas Department of~~  
27 ~~Assistive and Rehabilitative Services.~~

28  
29 ~~(4) Contract—A promise, or a set of promises, for breach of which the law gives a~~  
30 ~~remedy, or the performance of which the law in some way recognizes as a~~  
31 ~~duty. It is an agreement between two or more parties creating obligations that~~  
32 ~~are enforceable or otherwise recognizable at law. The term also encompasses~~  
33 ~~the written document that describes the terms of the agreement. For state~~  
34 ~~contracting purposes, it generally describes the terms of a purchase of goods or~~  
35 ~~services from a vendor or service contractor; however, the term also~~  
36 ~~encompasses grant arrangements.~~

37  
38 ~~(5) Contract Assignment—The transfer of contractual rights held by one party to~~  
39 ~~another party.~~

40  
41 ~~(6) Contractor—An entity or person holding a written agreement with a purchasing~~  
42 ~~entity to provide goods and services; or a recipient or sub recipient holding a~~  
43 ~~written agreement with a grantor or sub recipient to carry out all or part of a~~  
44 ~~program.~~  
45

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

1 §858.1 Definitions.  
2

3 In addition to the definitions contained in §800.2 of this title, the following words and  
4 terms, when used in this chapter, have the following meanings, unless the context clearly  
5 indicates otherwise.  
6

7 (1) Amendment--A formal revision or addition to a contract.  
8

9 (2) Bid--An offer to contract with the state submitted in response to a bid  
10 invitation.  
11

12 (3) Contract--A written agreement between the Agency and a contractor by the  
13 terms of which the contractor agrees to provide goods or services, by sale or  
14 lease to or for the Agency for Vocational Rehabilitation (VR) customers.  
15

16 (4) Contract records--All financial and programmatic records, supporting  
17 documents, papers, statistical data, or any other written or electronic materials  
18 that are pertinent to each specific contract instrument.  
19

20 (5) Contractor--An individual holding a written contract.  
21

22 (6) Corrective action plan--Specific steps to be taken by a contractor to resolve  
23 identified deficiencies and/or to address concerns that the contracting agency  
24 has regarding the contractor's compliance with contract terms or other  
25 applicable laws, rules, or regulations. The corrective action plan may also  
26 focus on improving contractor performance (as it relates to service delivery,  
27 reporting, and/or financial stability).  
28

29 (7) Debarment--The termination of the ability to continue an existing contract, to  
30 receive a new contract, to participate as a contractor or subcontractor, to  
31 provide goods or services to Agency Vocational Rehabilitation (VR) customers  
32 either directly or indirectly while working for an Agency contractor, or to  
33 make a bid, offer, application, or proposal for an Agency contract.  
34

35 (8) Effective date--The date of complete execution of the contract or the date upon  
36 which the parties agree that the contract takes effect.  
37

38 (9) Individual--Any individual, corporation, partnership, association, unit of  
39 government, or legal entity, however organized, or any portion thereof.  
40

41 (10) Program--Agency activities that are designed to deliver services or benefits  
42 provided by statute.  
43

44 (11) Respondent--An individual against whom the Agency has initiated a  
45 debarment or suspension action.  
46

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40  
41           (1)(8) ensure that:

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



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

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

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

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

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

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

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

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

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

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

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

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

- 1  
2 (B) immediately of any change in administrator or director; and  
3  
4 (C) within seven working days of any change in the contact telephone  
5 number designated in the contract; ~~and~~  
6

7 ~~(6)(15)~~ report any suspected violation of rules or laws to the appropriate  
8 investigative authority. This includes reporting to the Agency any abuse,  
9 neglect, or exploitation. ~~abuse, neglect, and exploitation issues to the Texas~~  
10 ~~Department of Family and Protective Services (DFPS) or to the appropriate~~  
11 ~~Texas Department of Aging and Disability Services (DADS) licensing staff.~~  
12

13 ~~(b) To provide services, a contractor must maintain adequate:~~  
14

15 ~~(1) funding for provision of services; and~~  
16

17 ~~(2) staff for the provision of services.~~  
18

19 ~~(b)(e)~~ A contractor ~~or potential contractor~~ may not offer, give, or agree to give an Agency  
20 ~~a DARS~~ employee anything of value.  
21

22 ~~(c)(d)~~ A contractor or applicant ~~potential contractor~~ may not engage in any activity that  
23 presents a real or apparent conflict of interest and must provide written attestation  
24 that no real or apparent conflicts of interest exist before execution of a contract with  
25 the Agency.  
26

27 ~~(d)(e)~~ Pursuant to Texas Government Code §572.054(b), certain Agency employees ~~A~~  
28 ~~former DARS employee~~ may not represent or receive compensation from any  
29 individual ~~person~~ concerning any contractual matter in which the former employee  
30 participated during his or her employment with the state.  
31

32 ~~(e)(f)~~ The Agency ~~DARS~~ may choose not to enter into a contract:  
33

34 (1) when, in the Agency's ~~DARS'~~ opinion, the contractor, ~~potential contractor,~~ or a  
35 controlling party has a documented, unsatisfactory history in contracting with  
36 the Agency ~~DARS~~ or with another state ~~health and human services~~ agency;  
37

38 (2) if the contractor ~~or potential contractor~~:  
39

40 (A) subcontracts any direct care services without specific authorization from  
41 the Agency ~~DARS and HHSC~~; and/or  
42

43 (B) assigns or transfers the contract without the Agency's prior written  
44 approval ~~of DARS and HHSC~~.  
45

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

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

10  
11 ~~(h) Goods or services purchased or reimbursed by DARS may be inspected or~~  
12 ~~monitored at the discretion of DARS or HHSC.~~

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

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

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

30  
31 (k)(l) Contractors ~~that provide vocational rehabilitation services~~ shall take affirmative  
32 action to employ and advance in employment qualified individuals with disabilities.

#### 33 34 **§858.4. Complaints.**

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

#### 41 42 **~~§858.5. Record Requirements.~~**

43  
44 ~~(a) The contractor must maintain all financial and contract related records:~~  
45

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

3  
4 ~~(2) in accordance with the DARS or HHSC contract requirements, rules, policies~~  
5 ~~and procedures.~~

6  
7 ~~(b) When required by DARS or HHSC, the contractor must use the official DARS form~~  
8 ~~to document services delivered.~~

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

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

#### 22 ~~§858.6. Access to Contractor Facilities and Records.~~

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

30  
31 ~~(b) If a contractor is terminating business operations, the contractor must ensure that:~~

32  
33 ~~(1) records are stored and accessible; and~~

34  
35 ~~(2) someone is responsible for adequately maintaining the records.~~

#### 36 ~~§858.7. Contract Monitoring.~~

37  
38  
39 (a) Any service purchased or reimbursed by [the Agency DARS](#) may be monitored at the  
40 discretion of [the Agency DARS](#) ~~or HHSC.~~

41  
42 (b) [The Agency DARS](#) ~~and HHSC~~ may conduct compliance monitoring reviews of the  
43 contractor's services to determine if the contractor is in compliance with the contract  
44 and with program rules and requirements. These reviews are conducted at the  
45 location where the contractor is providing the services unless [the Agency DARS](#) ~~or~~

1 ~~HHSC~~ specifies a different location. ~~DARS and HHSC~~ The Agency shall assess  
2 contractor performance based on contract standards.

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

7  
8 ~~(1) adequate working space for reviewing the records;~~

9  
10 ~~(2) every record DARS or HHSC requests for review; and~~

11  
12 ~~(3) copies, or access for DARS and HHSC staff to make needed copies, of~~  
13 ~~documents.~~

14  
15 ~~(d) During the monitoring review, DARS or HHSC may:~~

16  
17 ~~(1) review a sample of consumer records to determine the contractor's compliance~~  
18 ~~with contract requirements;~~

19  
20 ~~(2) interview consumers and staff members;~~

21  
22 ~~(3) observe consumers and staff members;~~

23  
24 ~~(4) consult with others, as appropriate; and~~

25  
26 ~~(5) conduct other activities, as appropriate.~~

27  
28 ~~(e) DARS or HHSC may expand a compliance monitoring review period or the review~~  
29 ~~sample at any time.~~

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

36  
37 ~~(g)~~ The Agency ~~DARS and HHSC~~ may conduct a fiscal monitoring review:

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

39  
40 (2) independent of a compliance monitoring review;

41  
42 (3) when a contract is terminated;

43  
44 (4) as a result of a complaint; or

45  
46 (5) at other times, as ~~DARS or HHSC~~ the Agency considers necessary.

1  
2 ~~(h) Fiscal monitoring is designed to ensure that:~~

3  
4 ~~(1) DARS received the goods or services paid for;~~

5  
6 ~~(2) The total amount paid by DARS was allowable under the contract; and~~

7  
8 ~~(3) The contractor maintained the financial records and internal controls necessary~~  
9 ~~to adequately account for claims under the contract.~~

10  
11 ~~(e)(i) The DARS and HHSC Agency~~ may use sampling methods in monitoring and  
12 auditing contracts.

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

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

18  
19 **§858.8. Corrective Action Plan.**

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

28  
29 **§858.9. Adverse Actions.**

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

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

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

42  
43 (3) the contractor's failure to follow an agreed-upon audit resolution payment plan;

44  
45 (4) the contractor's failure to submit an acceptable cost report, if applicable;

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

(b) ~~Types of~~ The Agency may take the following adverse actions ~~may include:~~

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

- 1 (4) Direct the contractor to suspend or terminate a subcontractor's participation in  
2 the provision of goods or services;~~Suspension of subcontractor's participation~~  
3 ~~or payments; termination of subcontract. DARS or HHSC directs a contractor~~  
4 ~~to suspend a subcontractor's participation, suspend a subcontractor's payments,~~  
5 ~~or terminate a subcontract.~~  
6  
7 (5) Terminate a contract for cause before its expiration date;~~Involuntary contract~~  
8 ~~termination. DARS or HHSC may terminate a contract for cause by citing the~~  
9 ~~contractor's failure to comply with the terms of the contract or with DARS or~~  
10 ~~HHSC rules, policies, and procedures.~~  
11  
12 (6) Suspend the contractor's right to conduct business with the Agency;~~-~~  
13 ~~Suspension. DARS or HHSC temporarily suspends the contractor's right to~~  
14 ~~conduct business with DARS. The causes for and conditions of suspension are~~  
15 ~~described in §392.323 of this subchapter (relating to Causes and Conditions of~~  
16 ~~Suspension).~~  
17  
18 (7) Debar the contractor's right to contract or conduct business with the Agency,  
19 in any capacity, for a specified period of time; or;~~Debarment. DARS or HHSC~~  
20 ~~does not allow a contractor to conduct business with DARS, in any capacity,~~  
21 ~~for a certain period of time. The causes for and conditions of debarment are~~  
22 ~~described in §392.321 of this subchapter (relating to Causes and Conditions of~~  
23 ~~Debarment).~~  
24  
25 (8) Take any other less severe action or actions that,~~which~~ the Agency determines  
26 necessary to ensure the contractor's compliance with the underlying contract,  
27 after considering the circumstances of a particular case.  
28

29 **§858.10. Debarment and Suspension of ~~Current and Potential Contractor~~**  
30 **Rights Contractors.**

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



1 to provide goods or services to DARS consumers either directly or indirectly while  
2 working for a DARS or HHSC contractor, or to make a bid, offer, application, or  
3 proposal for a DARS or HHSC contract. The debarment is for a specified time  
4 commensurate with the seriousness of the violation, the extent of the violation, prior  
5 impositions of sanctions or penalties, willingness to comply with program rules and  
6 directives, and other pertinent information. Generally, debarment does not exceed six  
7 years. Where conditions warrant, a longer period may be imposed.  
8  
9

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

16  
17 (1) ~~the contractor's future right to contract or subcontract; or~~

18  
19 (2) ~~a potential contractor's future right to have DARS or HHSC consider its offer,~~  
20 ~~bid, proposal, or application.~~

21  
22 (d) The Agency may suspend a contractor's contract if the Agency suspects that grounds  
23 may exist for debarment.  
24  
25

26 (e)(d) For purposes of both debarment and suspension of ~~contractual rights, DARS or~~  
27 ~~HHSC~~ a contract, the Agency may impute the conduct of ~~an individual, corporation,~~  
28 ~~partnership, or other association to the contractor, potential contractor, or the~~  
29 ~~responsible entity of the contractor or potential contractor with whom the individual,~~  
30 ~~corporation, partnership, or other association is employed or otherwise associated.~~  
31 Even an individual even though the underlying conduct may have occurred while ~~an~~  
32 ~~individual, corporation, partnership, or other association~~ the respondent was not  
33 associated with the contractor ~~or potential contractor, suspension of contractual~~  
34 ~~rights or debarment may be imposed. Remedial actions taken by the responsible~~  
35 ~~officials of the contractor or potential contractor are considered in determining~~  
36 ~~whether either suspension of contractual rights or debarment is warranted.~~  
37

### 38 §858.11. Causes and Conditions of Debarment.

39

40 (a) The Agency may ~~DARS or HHSC may remove contractual rights from an individual, a~~  
41 ~~corporation, a partnership, or a division of~~ debar a contractor ~~or legal entity for~~  
42 ~~causes~~ reasons including the following:  
43  
44

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

- 1
- 2 (A) Obtaining, ~~obtaining~~, attempting to obtain, or performing a public or
- 3 private ~~contractor~~contract or subcontract;
- 4
- 5 (B) Engaging ~~engaging~~ in embezzlement, theft, forgery, bribery, falsification
- 6 or destruction of records, fraud, receipt of stolen property, making false
- 7 statements or claims, tax evasion, or any other offense indicating moral
- 8 turpitude or a lack of business integrity or honesty;
- 9
- 10
- 11 (C) Use or possession of ~~being involved with dangerous drugs,~~ controlled or
- 12 illegal substances, or other drug-related offense;
- 13
- 14 (D) Violating ~~violating~~ federal antitrust statutes arising from submitting bids
- 15 or proposals;
- 16
- 17 (E) Committing ~~committing~~ an offense involving physical or sexual abuse or
- 18 neglect; or
- 19
- 20 (F) Committing an offense involving the direct support or promotion of
- 21 human trafficking.
- 22
- 23 (2) Being ~~being~~ debarred from contracting by any unit of the federal ~~government or any~~
- 24 ~~unit of a~~or state government;
- 25
- 26 (3) Violating Agency~~violating DARS or HHSC~~ contract provisions, including failing to
- 27 perform according to the terms, conditions, and specifications, or within the time
- 28 ~~limit(s)~~ specified, in ~~a DARS or HHSC~~an Agency contract, including, but not limited
- 29 to, the following:
- 30
- 31 (A) Failing ~~failing~~ to abide by applicable federal and state statutes, rules,
- 32 regulations, policies, and procedures, such as those regarding
- 33 ~~persons~~individuals with disabilities and those regarding civil rights;
- 34
- 35
- 36 (B) Having ~~having~~ a record of failure to perform or of unsatisfactory
- 37 performance according to the terms of one or more contracts or
- 38 subcontracts, if that failure or unsatisfactory performance has occurred
- 39 within five years preceding the determination to debar. ~~This~~
- 40 ~~subparagraph applies only for actions occurring after the effective date of~~
- 41 ~~these rules.~~ Failure to perform and unsatisfactory performance
- 42 ~~includes~~include, but are not limited to, the following:
- 43

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 46
- (i) ~~Failing~~failing to correct contract performance deficiencies after receiving written notice about them from ~~DARS, HHSC, the Agency~~ or ~~their~~its authorized agents;
  - (ii) ~~Failing~~failing to repay or make and ~~follow through with~~complete arrangements satisfactory to ~~DARS or HHSC~~the Agency to repay identified overpayments or other erroneous payments, or assessed liquidated damages or penalties;
  - (iii) ~~Failing~~failing to meet standards that are required for licensure or certification, or that are required by state or federal law, ~~DARS or HHSC~~Agency rules ~~or standards incorporated in contracts, or~~ Agency policy concerning ~~DARS contracts~~contractors;
  - (iv) ~~Failing~~failing to execute contract amendments required by ~~DARS or HHSC~~the Agency;
  - (v) ~~Billing~~billing for services or ~~merchandise~~goods not provided to the ~~consumer~~customer;
  - ~~(vi) submitting cost reports containing costs not associated with or not covered by the contract or DARS rules and instructions. Intent to increase individual or statewide rates or fees by submitting unallowable costs must be shown for a single cost report, but intent may be inferred when a pattern of submitting cost reports with unallowable costs is shown;~~
  - ~~(vi)~~(vii) ~~Submitting~~submitting a false report or misrepresentation ~~which~~that, if used, may increase individual or statewide rates or fees;
  - ~~(vii)~~(viii) ~~Charging customers~~ charging consumer or patient fees contrary to ~~DARS or HHSC~~Agency rules or policy;
  - ~~(viii)~~(ix) ~~Failing~~ failing to notify and reimburse ~~DARS~~the Agency or its agents for services ~~DARS~~that the Agency paid for when the contractor received reimbursement from a liable third party;

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

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

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

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

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

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

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

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

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

43  
44 (1) receive a contract;

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

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

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

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

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

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

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

39  
40 (c) A single occurrence of a violation may result in debarment or suspension.

41 ~~Debarment may be applied against an individual, a corporation, a partnership, a~~  
42 ~~division of a contractor, or an entire legal entity, or a specified part of a legal entity.~~

43  
44 ~~(d) Even a single occurrence of a violation may result in debarment or suspension if it is~~  
45 ~~severe. Other adverse actions may be taken if the violation is isolated or less severe.~~  
46

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

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

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

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

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

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

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

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

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

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

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

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

43  
44 (1) receive a contract;

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

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

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

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

10  
11 ~~The sufficiency of evidence required depends on the cause of the suspension or~~  
12 ~~debarment.~~ In making a debarment decision, the Agency may consider the following  
13 factors:  
14

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

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

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

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

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

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

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

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

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



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

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

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

18 **§858.15. Appeals.**  
19

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

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

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

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

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

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

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

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

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

19  
20 (6) The action requested.

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

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

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

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

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

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

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

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

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

- 3  
4 (g) ~~An Agency appeal decision DARS provides a written decision to the appellant~~  
5 ~~within 30 days after conclusion of the meeting, or if no meeting is held, within~~  
6 ~~45 becomes final 14~~ days after the date DARS receives the appeal, appeal decision is  
7 mailed, unless the appropriate DARS representative extends the time the contractor  
8 files a written request for reconsideration before that date.  
9

#### 10 §858.16. Request for Reconsideration.

- 11  
12 (a) ~~The contractor After DARS issues a decision on an appeal, the appellant may submit~~  
13 ~~in writing a request for reconsideration following the Agency's issuance of the appeal~~  
14 ~~decision by hand delivery, mail, common carrier, facsimile (fax) transmission, or~~  
15 ~~other method approved by the Agency in writing.:~~  
16

17 (1) A request for reconsideration shall only be hand delivered, mailed, or sent by  
18 common carrier to the Agency as directed on the Contractor Notice of Rights  
19 (VR 1309). A request for reconsideration sent by unapproved methods or to a  
20 different address will not be considered a valid request for reconsideration by  
21 the Agency.  
22

23 (2) The timeliness of a request for reconsideration is subject to the rules and  
24 procedures set out in the Unemployment Insurance rules at Chapter 815 of this  
25 title, except to the extent that such sections are clearly inapplicable or contrary  
26 to provisions set out under these Chapter 858 rules or the contract between the  
27 parties.  
28

- 29 ~~(b) An appellant may submit a request for reconsideration only if the appellant's request~~  
30 ~~for an appeal met the requirements set out in §392.329 of this subchapter (relating to~~  
31 ~~Appeals).~~  
32

- 33 ~~(c) Requests for reconsideration must be addressed to the DARS commissioner and~~  
34 ~~must be received by DARS within 20 days after the date DARS issues the decision~~  
35 ~~on the appeal.~~  
36

- 37 ~~(d) The DARS commissioner may designate a representative(s) to receive the request~~  
38 ~~for reconsideration and issue a decision on behalf of DARS.~~  
39

40 ~~(e)~~ (b) The request for reconsideration must shall not be granted unless each of the  
41 following three criteria are met:  
42

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

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

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

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

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

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