



## Office of the Auditor General

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### MEMORANDUM

**DATE:** June 1, 2023

**TO:** Honorable City Council  
Mayor Mike Duggan

**FROM:** Laura Goodspeed, CPA *LG*  
Auditor General

**RE:** The Office of the Auditor General's Rebuttal To The Agency Response To The Audit Of The Civil Rights, Inclusion, And Opportunity Department Third Report On Compliance Fee Dollars – Operations (April 2023)

**CC:** Anthony Zander, Director, Civil Rights, Inclusion, and Opportunity Department  
Colin Handzinski, Management Analyst, Office of the Chief Financial Officer  
Jeanet Kulcsar, Director of Strategy, Office of the Chief Financial Officer  
John Naglick, Chief Deputy CFO/Finance Director, Office of the Chief Financial Officer  
Jay Rising, Chief Financial Officer, Office of the Chief Financial Officer  
Nicole Sherard-Freeman, Group Executive, Jobs, Economy & Detroit At Work

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On April 13, 2023, the Office of the Auditor General (OAG) provided Anthony Zander, Director, Civil Rights, Inclusion, and Opportunity Department (CRIO), a draft copy of this report with a two-week notice to publish. We requested that the Agency provide its responses on or before the end of business on April 27, 2023. We also provided Mr. Zander with instructions and an "Implementation Tracking of Departmental Responses" template to provide the Agency's responses.

Despite extensions given to Mr. Zander, he was not able to provide the responses in time so they could be reviewed and attached with the audit report published on May 2, 2023.



On May 12, 2023, Mr. Zander submitted the Agency's responses along with a cover memo to our office, to the Honorable City Council Members, Mayor Duggan, and the others addressed above. This memo will serve as the official publication of the attached Agency Responses.

### **OAG Rebuttal to Agency Response**

The Generally Accepted Government Auditing Standards (GAGAS) 2018 Revision, compiled by the Comptroller General of the United States Government Accountability Office provides OAG with the basis for the rebuttal. Chapter 9: Reporting Standards for Performance Audits gives the following requirements relating to obtaining the views of responsible officials:

#### **Requirements: Obtaining the Views of Responsible Officials**

- 9.50** Auditors should obtain and report the views of responsible officials of the audited entity concerning the findings, conclusions, and recommendations in the audit report, as well as any planned corrective actions.
- 9.51** When auditors receive written comments from the responsible officials, they should include in their report a copy of the officials' written comments or a summary of the comments received. When the responsible officials provide oral comments only, auditors should prepare a summary of the oral comments, provide a copy of the summary to the responsible officials to verify that the comments are accurately represented, and include the summary in their report.
- 9.52** When the audited entity's comments are inconsistent or in conflict with the findings, conclusions, or recommendations in the draft report, the auditors should evaluate the validity of the audited entity's comments. If the auditors disagree with the comments, they should explain in the report their reasons for disagreement. Conversely, the auditors should modify their report as necessary if they find the comments valid and supported by sufficient, appropriate evidence.
- 9.53** If the audited entity refuses to provide comments or is unable to provide comments within a reasonable period of time, the auditors may issue the report without receiving comments from the audited entity. In such cases, the auditors should indicate in the report that the audited entity did not provide comments.



The Office of the Auditor General has reviewed the responses from Mr. Zander, relating to the “Audit Of The Civil Rights, Inclusion, And Opportunity Department Third Report On Compliance Fee Dollars – Operations (April 2023)” and in accordance with the Standards, we offer the following rebuttal to statements made in the “Implementation Tracking of Departmental Responses”, specifically to **Finding #1: CRIO Did Not Assess Compliance Fees In Accordance With Executive Order 2016-1 Resulting In Potential Loss Of Revenues To The City.**

It should be noted that at the request of Mr. Zander we met on May 10, 2023 to discuss the matter and both parties explained their respective positions.

### **Finding #1: Conditions**

CRIO’s calculation and assessment of compliance fees were not in accordance with Executive Order 2016-1 (EO 2016-1). The formula that was developed and used by the Department resulted in inaccurate calculations of compliance fees and a potential loss of revenues (specifically EO compliance fees revenue) to the City.

The table below illustrates a calculation of compliance fees assessment based upon the formula legislated in EO 2016-1 versus the formula implemented by CRIO:

Compliance Fees Calculation Comparison		
	Formula Legislated in EO 2016-1 Section 6	Formula Developed and Implemented by CRIO
Steps	<i>Example: If the Workforce Target Shortfall is 26%</i>	
<b>Step 1</b>	5% × Average Hourly Wage × Total Workhours × 10%	5% × Average Hourly Wage × Nonqualified Workhours <sup>(A)</sup> × 10%
<b>Step 2</b>	10% × Average Hourly Wage × Total Workhours × 10%	10% × Average Hourly Wage × Nonqualified Workhours × 10%
<b>Step 3</b>	15% × Average Hourly Wage × Total Workhours × 6%	15% × Average Hourly Wage × Nonqualified Workhours × 6%
<b>Step 4</b>	Sum of Steps 1, 2, and 3	Sum of Steps 1, 2, and 3

*Notes: (A) “Nonqualified Workhours” = “Total Work-Hours” – “Qualified Detroiters’ Work-Hours.” In the department practice, CRIO used Nonqualified Workhours instead of using the Total Workhours to calculate EO compliance fees.*

It should be noted that when the Workforce Target Shortfall reaches 51%, this indicates that the number of qualified Detroiters working on the project is below the minimum threshold. Therefore, the Qualified Detroiters’ Workhours will be zero. In these instances, the amounts of assessed compliance fees will be same either under the EO 2016-1 legislated formula or under CRIO’s adapted formula.

CRIO’s use of “Nonqualified Workhours” instead of “Total Workhours” as required by EO 2016-1 has effectively reduced the amount of total compliance fees assessed, resulting in potential loss of revenues. We estimate \$819,125 total potential loss of compliance fees through June 2019.

**Finding #1: OAG Recommendation A**

Correct the formula set in their assessment template (the template of “Monthly Contractor Summary Report”) and adopt an appropriate formula to assess compliance fees.

**CRIO’s Response:**

CRIO believes the formula CRIO has historically used to calculate the Compliance Fee’s accurately reflects the language in Executive Order 2021-2, Section 7.

- EO 2021-2<sup>1</sup>, Section 6., requires the following to be submitted by the contractor.
  - a. Total work hours
  - b. Total work hours by Detroiters
  - c. If applicable, for a contractor that fell short of the Workforce Target
    - 1. “Raw number of total work-hours by which the contractor fell short of the Workforce Target”
    - 2. “Percentage of total work-hours by which the contractor fell short of the Workforce Target”
- Section 7. method of calculation states, “For each work-hour comprising the first 10% of the total workhours by which the contractor fell short of the Workforce Target, 5% of the average hourly wage paid by the contractor during the preceding measurement period.”
- Section 6. distinguishes a difference between “total work hours” (used by OAG) and “total work hours by which the contractor fell short” (used by CRIO).
- Formulas used by CRIO, for a 26% shortfall:
  - $5\% \times \text{Avg. Hourly Wage} \times \text{Fell Short Hours} \times 10\%$
  - $10\% \times \text{Avg. Hourly Wage} \times \text{Fell Short Hours} \times 10\%$
  - $15\% \times \text{Avg. Hourly Wage} \times \text{Fell Short Hours} \times 6\%$

In summary , Mr. Zander also stated that:

- The difference between the formula the OAG uses and the formula CRIO uses is “Total Workhours” vs. “Nonqualified Workhours.” The reason CRIO uses nonqualified workhours is based on the qualifying statement in the language, “...total work hours by which the contract fell short...” We argue that the hours by which the contract falls short, are the total hours minus the Detroit hours, which gives you the “fell short” number.

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<sup>1</sup> EO-2021-2 is the third revision to the original EO2016-1. It emphasizes the inclusion of publicly-funded demolition/rehabilitation projects and clarifies the exclusion of publicly-funded projects funded by a grant awarded by a governmental entity. It maintains the original EO procedures for assessing compliance fees.



- CRIO will continue to use their “historical” interpretation of the language in the executive order.

**OAG Rebuttal:**

In short, we disagree with CRIO’s “historical” interpretation of the executive order.

The authors of EO-2016-1 included the following **specific example of the calculation** (we believe) to avoid confusion of language and interpretations:

“Thus, for example, if 25% of the total-hours performed on a publicly-funded construction project were performed by bona-fide Detroit residents, the contractor will have fallen short of the Workforce Target by 26% of the total workhours. That contractor’s minimum required contribution would be the sum of:

- 5% of the average hourly wage for 10% of the total work-hours;
- 10% of the average hourly wage for 10% of the total work-hours; and
- 15% of the average hourly wage for 6% of the total work-hours.

**The formula to calculate compliance fees does include nor reference “non-qualified” work hours.**

We asked Mr. Zander about the origins of CRIO’s “historical” interpretation and he could not provide any definitive answers or historical documentation regarding the matter. Our finding is based on the original executive order, in which the calculation of compliances fees has remained unchanged throughout its subsequent iterations and makes no reference to “non-qualified” work hours.

OAG will seek legal opinions from the Law Department and from the Local Policy Division through City Council on the correct interpretation of the calculation of compliance fees.



**Civil Rights, Inclusion  
and Opportunity**

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2 WOODWARD AVENUE, SUITE 1240  
DETROIT, MICHIGAN 48226  
PHONE: 313.224.4950  
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ATTACHMENT A:  
CIVIL RIGHTS, INCLUSION AND OPPORTUNITY RESPONSE

May 11, 2023

Civil Rights, Inclusion and Opportunity  
2 Woodward Ave., Suite #1240  
Detroit, MI 48226

Laura Goodspeed, Auditor General  
City of Detroit Office of the Auditor General  
2 Woodward Ave., Suite #216  
Detroit, MI 48226

Dear Ms. Goodspeed

The following attachment represents the Department of Civil Rights, Inclusion and Opportunity's response for the indicated findings and related recommendations in the "Audit of The Civil Rights, Inclusion and Opportunity Department Third Report On Compliance Fee Dollars – Operations (April 2023)" prepared by the Office of the Auditor General. We have provided the response, along with an estimated/ projected implementation date, contact person, and contact person number and email address, in the formatted template as requested.

Sincerely,

Anthony Zander  
Director  
Civil Rights, Inclusion and Opportunity

OFFICE OF THE AUDITOR GENERAL  
AUDIT OF CIVIL RIGHTS, INCLUSION, AND OPPORTUNITY DEPARTMENT THIRD REPORT ON COMPLIANCE FEE DOLLARS  
OPERATIONS  
April 2023

Implementation Tracking of Departmental Responses

FINDING #	AUDIT FINDING	RECOMMENDATIONS		RESPONSIBLE DEPARTMENT	DEPARTMENT RESPONSE(S)	ESTIMATED/ PLANNED IMPLEMENTATION DATE	CONTACT PERSON	CONTACT PERSON NUMBER/ EMAIL
		REF.	SPECIFIC RECOMMENDATION					

**OFFICE OF THE AUDITOR GENERAL**  
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1.	<b>CRIO Did Not Assess Compliance Fees In Accordance With Executive Order 2016-1 Resulting In Potential Loss Of Revenues To The City</b>	A	Correct the formula set in their assessment template (the template of "Monthly Contractor Summary Report") and adopt an appropriate formula to assess compliance fees.	Incentives Compliance	<p>We believe the formula CRIO has historically used to calculate the Compliance Fee's accurately reflects the language in Executive Order 2021-2, Section 7.</p> <p>EO 2021-2, Section 6., requires the following to be submitted by the contractor.</p> <ul style="list-style-type: none"> <li>a) Total work hours</li> <li>b) Total work hours by Detroiters</li> <li>c) If applicable, for a contractor that fell short of the Workforce Target <ul style="list-style-type: none"> <li>1. "Raw number of total work-hours by which the contractor fell short of the Workforce Target"</li> <li>2. "Percentage of total work-hours by which the contractor fell short of the Workforce Target"</li> </ul> </li> </ul> <p>Section 7. method of calculation states, "For each work-hour comprising the first 10% of the total work-hours by which the contractor fell short of the Workforce Target, 5% of the average hourly wage paid by the contractor during the preceding measurement period."</p> <p>Section 6. distinguishes a difference between "total work hours" (used by OAG) and "total work hours by which the contractor fell short" (used by CRIO).</p> <p>CRIO's calculation is based on the qualifying statement in the language of Section 7., "...total work hours by which the contractor fell short..." (6.c.1.). We argue that the raw hours by which the contractor falls short, are the total hours (6a) minus the Detroit hours (6b), which gives you the "fell short" hours.</p> <p>Formulas used by CRIO, for a 26% shortfall:  <b>5% x Avg. Hourly Wage x Fell Short Hours x 10%</b>  <b>10% x Avg. Hourly Wage x Fell Short Hours x 10%</b>  <b>15% x Avg. Hourly Wage x Fell Short Hours x 6%</b></p>	In Place	Anthony Zander – Director	<a href="mailto:zandera@Detroitmi.gov">zandera@Detroitmi.gov</a> (313) 407-7226
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		B	Review the assessment template (the template of “Monthly Contractor Summary Report”) and any associated forms annually, to ensure the template is accurate and updated according to the revisions to the City’s executive orders.	Incentives Compliance	CRIO will implement an annual quality review of all Executive Order documents, and applicable references, to ensure accuracy and compliance with the EO. This is part of an existing plan to provide a non-required annual Executive Order 2021-2, Executive Summary Report.	Implementation July 1, 2023	Tenika Griggs – Deputy Director	<a href="mailto:Tenika.Griggs@Detroitmi.gov">Tenika.Griggs@Detroitmi.gov</a> (313) 418-7280
		C	Implement procedures to safeguard sensitive fields (i.e., locking the formulas for calculation of compliance status and compliance fees) of the assessment template. Ensure that any editing or updating of the assessment template is only allowed by authorized personnel.	Incentives Compliance Data and Policy	The formulas used on the assessment template are currently safeguarded and locked. Updates and edits to the Monthly Contractor Summary Report / Contribution Form” and the “Count Sheet”, can only be edited by authorized personnel.	In Place.	Tenika Griggs – Deputy Director	<a href="mailto:Tenika.Griggs@Detroitmi.gov">Tenika.Griggs@Detroitmi.gov</a> (313) 418-7280
		D	Define and document accountabilities of the compliance fees assessment reports in CRIO’s administrative policies. (i.e., responsibilities for maintaining, updating, and revising of the assessment template)	Incentives Compliance Data and Policy	CRIO will implement an annual quality assurance review, which will include any additional control tools (to track responsibilities, assignments, time requirements, etc.) to ensure all Executive Order related materials are compliant. This is part of an existing plan to provide a non-required annual Executive Order 2021-2, Executive Summary Report.	Implementation July 1, 2023	Tenika Griggs – Deputy Director	<a href="mailto:Tenika.Griggs@Detroitmi.gov">Tenika.Griggs@Detroitmi.gov</a> (313) 418-7280

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2.	CRIO Did Not Comply With Executive Order 2016-1 Regarding Timely Contractor Compliance Evaluations And Monthly Reporting For Billings	A	Develop and document the measurement period determination.	Incentives Compliance	CRIO generally monitors within a monthly measurement period. There is currently only one contractor that reports quarterly, in which the reason of this determination is unknown, as it is prior to the compliance team employees and leadership staff.  However, we will add a measurement period determination document to our onboarding process. The determination will be based on responsible contracting, compliance consistency and the length of the project.	Implementation July 1, 2023	Tenika Griggs – Deputy Director	<a href="mailto:Tenika.Griggs@Detroitmi.gov">Tenika.Griggs@Detroitmi.gov</a> (313) 418-7280
		B	Evaluate contractors' compliance either monthly or quarterly in accordance with the requirement of the executive order. Complete compliance evaluation for each contractor who is subject to the executive order.	Incentives Compliance	CRIO currently evaluates contractor compliance on a monthly basis.  If a contractor fails to submit documents by the 15 <sup>th</sup> of each month and or fails to pay into the workforce contribution fund within 30 days on invoice date, a compliance escalation process begins.	Already in place. Began in 2020.	Tenika Griggs – Deputy Director	<a href="mailto:Tenika.Griggs@Detroitmi.gov">Tenika.Griggs@Detroitmi.gov</a> (313) 418-7280

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		C	Ensure to submit the Monthly Contractor Summary Reports timely. Continue to maintain and develop the compliance fees master dataset and sufficiently document the compliance fees metrics whereby the compliance fees can be fully tracked, analyzed, and reported Establish a mechanism by which the inclusion performance can be measured.	Incentives Compliance  Data and Policy	<p>CRIO currently has a master incentives Metrics Smartsheet that details the status of all Executive Order projects. On this metrics we are able to see and comment on project statuses with the Compliance Analyst. If we notice a project is behind in payments or submission, this is where that priority notice is identified so that we can consistently verify the compliance status, and escalations mechanisms needed for each project</p> <p>If a general contractor does not submit payrolls by the 15th of a given month, compliance escalation steps begin. This helps to ensure we meet the 30-day submission timeline to input monthly contractor summary reports into the Oracle smartsheet for invoicing. It is important to note that delays may occur in this process, especially if the general contractor or subcontractor documentation is insufficient or inaccurate.</p> <p>CRIO does maintain a master dataset that documents compliance fees metrics. We utilize a master Executive Order 2021-2 Smartsheet which populates an outward database whereby the compliance fees can be fully tracked, analyzed, and reported internally and externally.</p> <p><i>EO Dashboard:</i>  <a href="https://detroitmi.maps.arcgis.com/apps/dashboards/dashboard?appid=787e76aff2440fb696e398fe09a34f">https://detroitmi.maps.arcgis.com/apps/dashboards/dashboard?appid=787e76aff2440fb696e398fe09a34f</a></p> <p>CRIO will implement a quarterly quality control review of Monthly Contractors Summary Reports across all Compliance Analysts to ensure the accuracy and completion of the form meets Executive Order and proper documentation requirements.</p>	Already in place.  Quarterly Review Implementation: July 1, 2023.	Tenika Griggs – Deputy Director	<a href="mailto:Tenika.Griggs@Detroitmi.gov">Tenika.Griggs@Detroitmi.gov</a> (313) 418-7280
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		D	Develop procedures to ensure the compliance fees billing information is communicated timely to the ODFS special projects team within the OCFO.	Incentives Compliance  OCFO	<p>CRIO currently has a master incentives Metrics Smartsheet that details the status of all Executive Order projects. On this metrics we are able to see and comment on project statuses with the Compliance Analyst. If we notice a project is behind in payments or submission, this is where that priority notice is identified so that we can consistently verify the compliance status, and escalations mechanisms needed for each project</p> <p>If a general contractor does not submit payrolls by the 15th of a given month, compliance escalation steps begin. This helps to ensure we meet the 30-day submission timeline to input monthly contractor summary reports into the Oracle smartsheet for invoicing. It is important to note that delays may occur in this process, especially if the general contractor or subcontractor documentation is insufficient or inaccurate.</p> <p>CRIO will implement a quarterly quality control review of Monthly Contractors Summary Reports across all Compliance Analysts to ensure the accuracy and completion of the form meets Executive Order and proper documentation requirements.</p>	<p>Already in place.</p> <p>Quarterly Review Implementation: July 1, 2023.</p>	Tenika Griggs – Deputy Director	<a href="mailto:Tenika.Griggs@Detroitmi.gov">Tenika.Griggs@Detroitmi.gov</a> (313) 418-7280

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3.	<b>CRIO Does Not Have A Process That Ensures They Capture And Monitor All Projects Subject To Executive Order 2016-1</b>	A	Expand and create definitive communication channels with all potential stakeholders who are sources of information relating to projects subject to the executive order. Develop a mechanism to proactively capture and monitor this data.		CRIO holds monthly meetings with various City Departments who manage projects that are bound by the Executive Order to ensure we are aware, prepared, and included in upcoming developments that meet the threshold. This helps CRIO to be sure we are capturing all projects.  If a new project, either public or private, is being planned, CRIO's Incentives Compliance Team reaches out to the project's General Contractor or the Developer to onboard the project and prepare for Executive Order monitoring.	Already in place. Began in 2022.	Tenika Griggs – Deputy Director	<a href="mailto:Tenika.Griggs@Detroitmi.gov">Tenika.Griggs@Detroitmi.gov</a> (313) 418-7280
		B	Collect and document sufficient project information (i.e., project contract value, project site, project life, project start date and end date, labor cost estimates, project status, etc.) and establish a mechanism to determine compliance fees to be expected. Develop a procedure to ensure that the projects information is updated timely, accordingly, and completely.	Incentives Compliance	As part of the onboarding process, the project manager, General Contractor or Developer of a public or private project which exceeds \$3m or a Demo project which exceed \$50k, completes the CRIO project information form: <a href="#">form</a>  That form records the project name, cost, start date, end date, address, and contact information for the project's point person who will interact with CRIO.  CRIO meets with the developer/ contractor throughout the life of the project. This open line of communication ensures that any changes, or barriers, are communicated and addressed.	Already in place. Began in 2020.	Tenika Griggs – Deputy Director	<a href="mailto:Tenika.Griggs@Detroitmi.gov">Tenika.Griggs@Detroitmi.gov</a> (313) 418-7280

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		C	Design and implement applicable procedures to ensure that the projects are monitored from start to the end, and continuously monitor the project's close-out.	Incentives Compliance	<p>CRIO's monthly meetings with City Departments and the DEGC allow CRIO to be informed of projects before they begin. This allows CRIO to proactively engage with the contractor prior to construction and allows CRIO to effectively monitor the projects and to avoid the issues of 2016-2019.</p> <p>CRIO has procedures in place to ensure projects are being monitored from start to end. This includes monthly meetings with various City Departments, the incentive's metric starts and end date columns, site visits, etc. In addition, CRIO provides a letter to the developer that the close-out process is complete.</p> <p>CRIO meets with the developer/ contractor throughout the life of the project. This open line of communication ensures that any changes, or barriers, are communicated and addressed.</p>	Already in place. Began in 2022	Tenika Griggs – Deputy Director	<a href="mailto:Tenika.Griggs@Detroitmi.gov">Tenika.Griggs@Detroitmi.gov</a> (313) 418-7280