

# City of Detroit

## CITY COUNCIL

LEGISLATIVE POLICY DIVISION

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**TO:** Detroit City Council

**FROM:** David Whitaker, Director   
Legislative Policy Division

**DATE:** August 28, 2023

**RE:** **Report on sanctions for contractors with bad business practices in the demolitions**

The Legislative Policy Division (LPD) has been requested by Council Member Waters to provide a report regarding sanctions of contractors with bad business practices in the demolitions. The request was to provide answers to the following:

- Please let us know what options exist within City statutes and policies to extend sanctions to potential contractors who have a history of engaging in bad business practices, including poor financial management (ex. defaulting on federal loans, etc.)
- Please let us know any contractors with current demolition contracts who have any outstanding loans that they are in default on, either private or government.

I.

With regard to the first inquire on what options exist within City statutes and policies regarding sanctions to contractors that have a history of bad business practices, LPD notes that the City Code Section 17-5-2 provides:

No bid shall be accepted from or contract awarded to any person who is in arrears to the City upon debt or contract, or who has defaulted as a surety or upon any obligation to the City, or who shall in other respects be disqualified according to the provisions of this article or any other provision of this Code or the Charter.

If the contractor's poor financial management has led to a debt or arrears to the City, the sanction upon the contractor is that no contract can be awarded. A demolition contractor that is in default of a federal loan would be subject to the regulatory provisions and terms of the federal loan. In addition to Section 17-5-2 of the City Code, the debarment ordinance provides a method of prohibiting bad actors from obtaining a contract from the City, Section 17-5-355 Grounds for debarment provides in pertinent part:

- (a) A contractor may be debarred, based upon a preponderance of the evidence, for:
  - (1) Violation of the terms of a City contract or subcontract, or a contract or subcontract funded in whole or in part by City funds, such as **failure to perform in accordance with the terms of one or more contracts, or the failure to perform, or unsatisfactory performance of one or more contracts;**
  - (2) Failing to comply with state or federal law or regulations, or this Code, applicable to the performance of a contract;
  - (3) Violation of this Code, City procurement, or other policies or administrative orders that have the gravity or sufficiency to justify debarment. The Inspector General shall make a determination on whether the violation has reached a level justifying debarment based upon the totality of the circumstances creating the violation;
  - (4) Knowingly or negligently using a debarred contractor as a subcontractor;
  - (5) Evidence of (i) the contractor or the contractor's officers or owners, or (ii) any person or entity having a direct or indirect financial or beneficial interest in the contractor or its operations; **engaging in a criminal offense or civil misconduct that evidences a lack of business integrity or business honesty**, including, but

not limited to, embezzlement, theft, theft of services, forgery, bribery, fraud, tax evasion, falsification or destruction of records, making false statements, or receiving stolen property, or violations of law relating to the obtaining or performance of public contracts;

- (6) Submission of false or misleading documentation, or making false or misleading statements;
- (7) Submission of false or misleading information provided to the City in an attempt to secure certification as a Detroit-based, Detroit-headquartered, or Detroit-resident business, as defined in [Section 17-5-1](#) of this Code.
- (8) Failure to report unethical conduct by a public servant who has a duty to the City of Detroit; or
- (9) **Any other conduct that evidences the inability of the contractor to act responsibly in its conduct on behalf of the City.**

(b)

The conduct giving rise to the debarment **may be based upon actions taken in connection with work undertaken for the City, or with other public or private entities.**

The grounds listed for debarment is intended to address contractors who are bad actors and include: failing to perform satisfactorily; engaging in criminal or civil misconduct; or other conduct that evidences the inability to act responsibly in its conduct on behalf of the City. The City's debarment ordinance provides that the Inspector General while conducting the investigation can under Section 17-5-360, place a contractor on interim suspension. This suspension can be implemented for 90 days and if necessary extended for three additional 30-day periods and can further be followed by a finding of debarment for up to a maximum of 20 years. In addition to the remedy of sanctioning a contractor with debarment the ordinance indicates under Section 17-5-363 *Application of remedies*:

The provisions of this division are in addition to any other rights or remedies available to the City in connection with the award of any contracts to disqualify bidders who are not responsible, regardless of whether they have been debarred under this division. This right extends, but is not limited to, declining to award contracts to bidders having officers, owners, managers, or persons or entities directly or indirectly holding a financial or beneficial interest in previously associated with debarred contractors.

The provisions of this division are in addition to any contractual or legal rights or remedies available to the City to redress contractual performance issues.

A contractor may be disbarred as a remedy in addition to any contractual or legal remedy available by law.

## **II.**

The second question was with regard to any contractors with current demolition contracts who have any outstanding loans that they are in default on, either private or government. LPD is unable to identify any current demolition contractors that have received any City loan. Unless it is determined that the loan meets a public purposes provided by law, the loan would be in violation of the prohibition against the City lending its credit to private entities.<sup>1</sup> LPD notes that if a contractor was in default of any obligation with the City they would not be allowed to enter into a City contract.<sup>2</sup> With regard to a demolition contractor obtaining a private or government loan (outside the purview of the City of Detroit), LPD does not have the authority to obtain information regarding a private entity's financial obligations.

If we can be of further assistance please feel free to call upon us.

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<sup>1</sup> Michigan Constitution Article VII, Section 26

<sup>2</sup> Home Rule City Act MCL 117.5(f)