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# City of Detroit

## CITY COUNCIL

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**TO:** Detroit City Council  
**FROM:** David Whitaker, Director   
Legislative Policy Division  
**DATE** June 10, 2022  
**RE:** United Electric Contractor Issues

The Legislative Policy Division (LPD) has received a request from Council President Mary Sheffield to provide a report regarding United Electric Contractor. The entity has been the subject of allegations of racial discrimination in its employment practices. The Council President put a series of questions to LPD seeking our response. In the following report LPD provides the information it was able to ascertain.

**1. Please list all development projects in Detroit in which United Electrical Contractors is a designated contractor or subcontractor.**

The Office of Contracting & Procurement (OCP) has access to all contractors that have approved contracts with the City of Detroit. LPD contacted OCP to compile a list of development projects, in which United Electrical Contractors (UEC) was reported as the general contractor. According to OCP, although UEC is registered as a supplier in Oracle (the City’s procurement software), they have never been a general contractor for any projects contracted through OCP’s procurement process.

Information regarding subcontractors is not readily available to LPD through Oracle, because contract agreements seldomly name the sub-contractors involved in a particular project. The City contract agreements are between the City and the general contractor. However, LPD notes all

City contracts contain language provisions requiring subcontractors to comply with the terms and conditions of the general contract.

LPD also notes, it is the responsibility of the Civil Rights, Inclusion, and Opportunity (CRIO) Department to verify whether entities contracting in the City are compliant with the City's codes and Executive Orders regarding human rights and employment. For that reason, LPD contacted CRIO, in an attempt to compile a list of all the development projects within the City of Detroit, where UEC may be identified as a sub-contractor, as well as a list of any complaints filed against UEC.

Unfortunately, CRIO was unwilling to confirm or deny UEC's role in any development projects or divulge details of any complaints reported to CRIO or to any other governmental entity regarding UEC. CRIO asserted, they would only respond to LPD's inquiry if a formal request was made by a Council Member submitting a memo to the Director of CRIO.

On the other hand, LPD was able to retrieve a list of projects UEC self-identified as being a participant in. The list was published on UEC's website. However, LPD could not verify UEC's role on these projects nor could LPD ascertain whether any complaints were filed by employees who have worked on these projects. The projects include, but are not limited to the following:

- City Club Apartments
- Farwell Building
- Capitol Park Lofts

The Farwell Building and Capital Park Lofts are not on CRIO's website. However, City Club Apartments is included in the list of projects CRIO tracks on their website. Although, CRIO's website does not include any information regarding UEC's role in the projects or any complaints filed against UEC.

LPD further notes that in 2021, former Council President Brenda Jones inquired about complaints filed against United Electrical Contractors. CRIO's response, dated September 29, 2021, mentioned there were six complaints filed against UEC with the Michigan Department of Civil Rights (MDCR) in 2020 (see Attachment A). CRIO stated in their response to the former Council President, that the United States Equal Employment Opportunity Commission (EEOC) had assumed "jurisdiction" over the six cases on July 7, 2021. CRIO also stated in their response that they would request for MDCR to share the EEOC findings with CRIO when the investigation was completed. Furthermore, CRIO indicated they would:

“[s]hare those findings with the respective city departments and determine appropriate next steps with regards to the United Electrical Contractors and their work on the Godfrey Hotel development project... CRIO will monitor the project, which is set to begin construction in October 2021, in accordance with the tax abatement exemption certificate agreements.”

LPD could not confirm if CRIO fulfilled this commitment to the former Council President or if any additional complaints have been filed against UEC since the report was submitted in 2021.

The Godfrey Hotel redevelopment project was named in CRIO's response to the former Council President. However, LPD was not able to verify in what manner the Godfrey Hotel project relates to the complaints filed with the Michigan Department of Civil Rights (MDCR). Currently, this project is cited on CRIO's website, but is not listed on UEC's website.

## **2. What legal repercussions can the City take to hold accountable so-called "Bad Actor" contractors and subcontractors?**

The legal actions the City can take against a so-called "Bad Actor" depends on the nature of the relationship between the City and the "Bad Actor" entity. If the relationship between the two is contractual, the City would be guided by the language of the contract. City contracts have a clause that requires the contractor to comply with all federal, state and local laws which would include the U.S. Constitutional Equal Protection Clause, Michigan's Elliott-Larsen Civil Rights Act and the City Code Section 23-4-11 *Provisions required in City contracts*. All three prohibit racist and discriminatory actions in employment. If the allegations of discrimination are found to be true, the City could avail itself of any contractual remedy available, including but not limited to termination of the contract.

Additionally, City contracts contain language that make the employment provisions applicable to any subcontractors. The general or primary contractor is responsible for the subcontractor's compliance. A breach by a subcontractor is usually enforced by and through the general or primary contractor. Should the general contractor fail or is unable to cure the subcontractor's breach, the legal remedies available under contract law may be taken against the general contractor.

Additional ramifications may be pursued under the Debarment Ordinance. Section 17-5-351 *Purpose*, provides in pertinent part:

- (a) The City shall solicit offers from, award contracts to, consent to subcontracts with, or otherwise do business with, responsible contractors only. To effectuate this policy, the debarment of contractors from current or future City work may be undertaken.

The grounds for debarment are set forth under Section 17-5-355, and include but are not limited to:

- (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;
  - (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 City has different approaches to pursuing actions against “Bad Actors” either contractually or through debarment, if the allegations levied against United Electrical Contractors is validated. LPD notes that no entity is exempt from complying with the constitutional prohibitions against racial discrimination and/or state prohibitions against racial discrimination. Any person that has been discriminated against based upon race, has a legal cause of action against the entity.

**3. What enforcement or penalties, including disbarment or abatement clawbacks, can the City undertake to reprimand bad actors?**

As indicated above, the City has the right to enforce any contractual breach that a contractor or subcontractor working under a general contractor with the City has committed. In addition to contractual remedies available, if by a preponderance of the evidence warrants, the Inspector General and the City finds the entity is not acting in a responsible manner (i.e.: discriminatory behavior) the entity may be subject to debarment.

With regard to abatement clawbacks, the authority to clawback an abatement is based upon the whether the statute allows for a clawback and/or the contractual agreement the City enters into with the developer that provides a clawback. In many instances the developer is not the general contractor constructing the project. To receive the abatement the developer agrees to perform the specific representations made to qualify for the abatement (i.e.: number of employees, number of affordable housing units, etc.). The clawback provisions statutorily or contractually, are specific to the developer’s breach of representations made and may not be applicable to a separate breach of contract by the general contractor or a subcontractor.

**4. Are subcontractors held to the same enforcement standards as the primary contractor?**

As previously indicated, City contracts provide that the terms and conditions of the general contract apply to any subcontractors engaged by the general contractor which include discriminatory actions as a breach. The City’s enforcement standard is applicable to the primary or general contractor. Without looking at the individual contract, LPD cannot state as a matter of certainty that the subcontractor is always held to the same enforcement standard as the primary or general contractor.

**5. Do City contractors and subcontractors have to abide by a code of conduct on City development projects?**

All contractors engaged with the City are required to comply with federal, state and local laws. Any contractor with the City must comply with the requirements of Section 23-4-11 which provides in pertinent part:

*Provisions required in City contracts.*

- (a) All contracting City departments and agencies shall include in all contracts negotiated or renegotiated by them a covenant obligating the contractor not to discriminate against any

employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of the contract, with respect to such employee's hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, religious beliefs, national origin, age, height, weight, familial status, marital status, disability, public benefit status, sex, sexual orientation, or gender identity or expression. Breach of this covenant shall be deemed a material breach of the contract.

As previously indicated, City contracts require subcontractors to comply with the terms and conditions of the general or primary contract. LPD notes, the provisions of Section 23-4-11(a) prohibiting discrimination are also found in the Elliott-Larsen Civil Rights Act and are applicable to primary and subcontractors.

**6. What is CRIO's role in investigating instances of onsite racism and other discriminatory behavior?**

As previously indicated the role of investigating instances of racism and discrimination during the performance of a contract would be under the Civil Rights, Inclusion & Opportunity Department. The Department is formerly known as the Human Rights Department as designated under the City Charter, Article 7, *The Executive Branch: Programs, Services and Activities*. Chapter 7, *Human Rights*. Pursuant to the City Code, Section 23-4-11 provides the following:

- (b) All contracting City departments and agencies shall include in all contracts negotiated or renegotiated by them a covenant obligating the contractor to furnish information required by the agency or the Human Rights Department pursuant to Subsection (a) of this section. Breach of this covenant shall be deemed a material breach of the contract.
- (c) All contracting City departments and agencies shall include in all contracts negotiated or renegotiated by them a liquidated damages clause to allow for recovery from the contractor, by set-off against the unpaid portion of the contract price, or otherwise pursuant to the contract, a specified dollar amount per day, as liquidated damages and not as a penalty, for each day that the contractor fails to comply with this article as determined by the Human Rights Department, the said sum being fixed as negotiated and agreed upon by and between the contractor and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages, which the City would sustain in the event of such a breach of contract, and said amount is agreed to be the amount of damages which the City would sustain.
- (d) Prior to the award and effective date of contract with the City, the Human Rights Department shall review and determine whether the prospective contractor is in compliance with Section 23-4-1 of this Code.
- (e) In accordance with Section 7-704 of the Charter and Article II, Division 2, of this chapter, the Human Rights Department is authorized to investigate and make a determination regarding any employment complaint.
- (f) In the event of the contractor's failure to comply with the equal employment opportunity provisions of its contract with the City or orders as issued by the Human Rights

Department, the City may, at its option: (1) Cancel, terminate or suspend the contract in whole or in part; (2) Recover liquidated damages pursuant to Subsection (c) of this section; or (3) Utilize other legal or equitable remedies.

- (g) In order to ensure compliance with this section, the Human Rights Department is authorized: (1) To gather, at the direction of the Mayor, contractual information from all City contracting departments and agencies; (2) To evaluating employment data submitted by contractors; and (3) To engaging in contract compliance reviews and hearings to determine fair employment practices and enforcement of this section in determining eligibility status to do business with the City.

Pursuant to the Code provisions, CRIO has broad investigative tools and can also refer an entity to the Inspector General for a debarment investigation, if necessary. If an entity is subject to debarment, the entity would be precluded from participating in any contract with the City as a primary or subcontractor.

If we can be of further assistance, please call upon us.

## Attachment A

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**To: Council President Brenda Jones**  
**From: Kim Rustem, Director of Civil Rights, Inclusion and Opportunity Department**  
**Date: September 29, 2021**  
**Memo: Civil Rights Complaints Filed Against the United Electrical Contractors**

The Honorable Council President Brenda Jones:

This memo is in response to an inquiry we received from your office on September 17, 2021.

This question was regarding six civil rights complaints filed in 2020 with the Michigan Department of Civil Rights (MDCR) against the United Electrical Contractors. According to Chapter 23, section 23-2-13 of the Detroit City Code, the Detroit Civil Rights Inclusion and Opportunity department cannot accept complaints from a complainant who has previously filed a complaint involving the same transaction or occurrence with any other city, state, or federal civil rights agency, department or commission, unless the prior complaint was dismissed or jurisdiction of the complaint was referred to the department. Therefore, on September 23, 2021, CRIO reached out to the MDCR for more information on these cases. On September 24, 2021, the MDCR notified CRIO that the United States Equal Employment Opportunity Commission (EEOC) had assumed jurisdiction over these cases on July 7, 2021. CRIO requested that the MDCR share the EEOC findings with our department upon completion of their investigation. Once received, CRIO will share the findings with the respective city departments and determine appropriate next steps with regards to the United Electrical Contractors and their work on the Godfrey hotel development project. In the meantime, CRIO will monitor the project, which is set to begin construction in October 2021, in accordance with the tax abatement exemption certificate agreements.

Please do not hesitate to reach out with any additional questions.

Thank you,

DocuSigned by:

*Kimberly Rustem*

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Kim Rustem  
Director  
Civil Rights, Inclusion and Opportunity Department