

City of Detroit

Office of Inspector General

**Appellee City of Detroit Office of Inspector
General's Response to Appellant Bobby W.
Ferguson**

OIG Case No. 24-0002-INV

May 8, 2024



Ellen Ha, Esq., CIG

Inspector General

**DETROIT CITY COUNCIL
DEBARMENT APPEAL HEARINGS**

BOBBY W. FERGUSON,

Debarment Appellants

v

CITY OF DETROIT OFFICE OF THE INSPECTOR GENERAL,

Debarment Appellee

**APPELLEE CITY OF DETROIT OFFICE OF THE INSPECTOR GENERAL (OIG)'s
RESPONSE TO APPELLANT BOBBY W. FERGUSON**

INTRODUCTION:

On March 25, 2024, the OIG issued a 20-year debarment against Bobby W. Ferguson for the reasons outlined in the OIG's final debarment report issued on the same date. Prior to the issuance of the debarment, Mr. Ferguson was sent a Notice of Debarment and a copy of the OIG's draft debarment report which details the reasons and the effect of the debarment. He was also provided an opportunity to refute or dispute the reasons for his debarment pursuant to the City's Debarment Ordinance and the OIG's Administrative Hearing Rules. Mr. Ferguson did not refute or dispute any of the OIG's findings. More importantly, he did not contest or oppose the debarment during the OIG's administrative process. However, he now appeals the debarment directly to this Honorable Body. The OIG therefore respectfully requests this Honorable Body to reject Mr. Ferguson's appeal and further affirm the OIG's debarment of Mr. Ferguson for the reasons stated below.

OIG'S POSITION ON THE PROCEDURAL DEFECT OF THE APPEAL:

1. Bobby W. Ferguson is Not a Responsible Contractor.

The City's Debarment Ordinance requires the City to conduct business with "responsible contractors only." Mr. Ferguson was convicted by a jury of nine felonies, including racketeering, extortion, and bribery in March 2013. As such, he was sentenced to 252 months in federal prison

and ordered to pay restitution to the City of Detroit Water and Sewerage Department \$6.2 million. Based on information that was available to the OIG in March 2024, the OIG estimates Mr. Ferguson still owes the City over \$2.6 million in restitution payment. Therefore, Mr. Ferguson is not a responsible contractor.

2. Council Must Preserve the Integrity of the OIG’s Administrative Process and the City’s Debarment Ordinance.

Mr. Ferguson submits this appeal directly to Council without opposing the OIG’s notice of proposed debarment, as required by Section 17-5-357(c) of the City’s Debarment Ordinance (the Ordinance). By way of context, on February 26, 2024, the OIG issued the Notice of Initiation of Debarment, along with a copy of the OIG’s draft debarment report which articulates the basis of the proposed debarment. The letter notifying Mr. Ferguson of the OIG’s initiation of debarment specifically stated that Mr. Ferguson has until March 11 to request an administrative hearing and/or until March 25 to submit a written response. The letter also included a copy of the OIG’s Administrative Hearing Rules and FAQ pertaining to the hearing. Having received no response from Mr. Ferguson on March 11 or 25, the OIG determined that Mr. Ferguson was not opposing the debarment. Therefore, on March 25, 2024, the OIG issued the final debarment for 20 years with an effective date of March 11, 2013. Because Mr. Ferguson failed to oppose the OIG’s debarment, it is the OIG’s position that Mr. Ferguson’s current appeal to this Honorable Body is defective.

Mr. Ferguson’s intentional bypassing of the OIG’s administrative process not only questions the integrity of the City and the OIG’s process of debarment, but also the City’s Debarment Ordinance. The City’s debarment process, including providing the notice of debarment and opposing the debarment, was put in place by the Debarment Ordinance to ensure the integrity of the OIG’s process before issuing the debarment and the OIG’s final findings for the debarment. Mr. Ferguson cannot just skip this internal process and directly appeal to City Council.

3. Allowing A Direct Appeal to Council Would Set a Bad Precedent.

The number of years of debarment for Mr. Ferguson and the effective date for the debarment of Mr. Ferguson are consistent with the past OIG debarments involving similar criminal activities. Mr. Ferguson’s debarment is therefore no different from other debarments processed through the OIG. Each debarred contractor who appealed the debarment to Council followed the City’s Debarment Ordinance and submitted their opposition to the debarment to the OIG prior to filing their appeal to Council. Mr. Ferguson therefore should not be allowed directly appeal to Council.

If this Honorable Body allows Mr. Ferguson to continue his appeal, Council would effectively nullify a portion of the City’s Debarment Ordinance and the OIG’s internal administrative process in debarring contractors and subcontractors. The OIG’s process of receiving and reviewing a written response and/or holding a hearing with a contractor who is about to be debarred are valuable and necessary steps for the City to ensure debarment decisions are made in accordance

with the City's Debarment Ordinance. Moreover, the OIG in the past has revoked a debarment based on the written response or information presented at the administrative hearing by the contractor.

Therefore, if Mr. Ferguson is allowed to appeal to Council under the current circumstances, it would set a bad precedent for the City, as every contractor and subcontractor would simply ignore the City's debarment process through the OIG and directly appeal to Council. There would be no incentive for any contractor or a subcontractor to submit a written response to the OIG's draft debarment report when a debarment is initiated, much less go through the OIG's administrative hearing process. Rather, they would all take Mr. Ferguson's approach to debarment and simply appeal their debarments directly to this honorable body.

STANDARD OF DEBARMENT APPEAL:

As established through the City's past debarment appeals, the standard of appeal before this Honorable Body is whether the OIG abused its discretion when debaring Mr. Ferguson. Merriam-Webster defines "abuse of discretion" as "a ruling that is clearly unreasonable, erroneous, or arbitrary and not justified by the facts or the law. . ." The reasons for which Mr. Ferguson was debarred are clearly articulated in the OIG's Debarment Report issued on March 25, 2024. Moreover, the debarment was determined by the OIG based on preponderance of evidence found during the OIG's investigation. Therefore, the OIG now responds to the merits of the appeal, as submitted by the Debarment Appellant, Bobby Ferguson.

OIG'S POSITION ON THE MERITS OF THE APPEAL:

1. The OIG Has Jurisdiction to Debar Bobby Ferguson.

Mr. Ferguson questions the OIG's jurisdiction to debar him, as the "premise" that the debarment was based on his "prior conviction." The OIG concurs with Mr. Ferguson that his debarment is based on his prior conviction but not that the OIG lacks jurisdiction. His debarment in fact was based on his prior criminal activity, as detailed in the Debarment Report. Moreover, the Inspector General has the authority to debar contractors pursuant to Section 6-308 of the 2012 Charter of the City of Detroit and Section 17-5-356 of the City's Debarment Ordinance. Further, the OIG has jurisdiction in that Section 17-5-355(c) of the City of Detroit Debarment Ordinance specifically provides: "There is no statute of limitations on investigations, findings of violation of the debarment policy, or the initiation of debarment proceedings." Therefore, the OIG can debar Mr. Ferguson based on his past conduct as a City contractor.

2. The Debarment Does Not Conflict with the City's Second Chance Initiative.

Mr. Ferguson suggests in his appeal that the OIG's debarment conflicts with the City's Second Chance Initiative in that as a returning citizen, he deserves a second chance in employment. However, the OIG is not denying Mr. Ferguson's ability to be gainfully employed as a returning citizen.

First, the OIG's debarment only applies to Mr. Ferguson's ability to work for the City as a contractor. The debarment does not prevent Mr. Ferguson from working as a contractor *in* the City. The debarment simply precludes Mr. Ferguson serving as a contractor or as a subcontractor *for* the City. Second, the debarment is not permanent. The maximum period of debarment under the City's Debarment Ordinance is 20 years. Moreover, the effective date of his 20-year debarment is March 11, 2013, the date a jury found Mr. Ferguson guilty of 9 felony counts, including racketeering, extortion, and bribery. As such, Mr. Ferguson's debarment expires on March 11, 2033. Third, the debarment does not preclude Mr. Ferguson from being employed by other companies or conducting business with entities other than the City. The debarment only precludes Mr. Ferguson from being a contractor with the City and/or serving as a subcontractor on a City contract.

3. City's Debarment Ordinance Provides Structure and Sets Limitations for the OIG.

The last claim made by Mr. Ferguson in his appeal includes his legal interpretation of the City's Debarment Ordinance. He suggests that the OIG misapplied Section 17-5-354(b) of the Debarment Ordinance, which would render Section 17-5-355 of the Ordinance void in that it unlawfully provides "the OIG unstructured and unlimited discretion to debar." As such, Mr. Ferguson alleges that the OIG cannot preclude him from being a subcontractor.

First, Mr. Ferguson is making a legal argument in a wrong forum. The Detroit City Council, as a legislative body of the City, does not have the authority to adjudicate legalese. Nevertheless, aside from this fact, Section 17-5-354(b) of the Debarment Ordinance specifically states in part: "No debarred contractor is eligible to serve as a subcontractor..." Therefore, per this provision of the Ordinance as applied correctly, Mr. Ferguson, as a debarred contractor, cannot serve as a subcontractor. Finally, Section 17-5-355 of the Ordinance does not provide the OIG unstructured and/or unlimited discretion to debar contractors. On the contrary, the City's Debarment Ordinance provides structure for the OIG in debarring contractors by outlining the process and further limits the OIG's discretionary authority within the confines of the Debarment Ordinance, as required by the 2012 Charter of the City of Detroit.

CONCLUSION

In conclusion, Mr. Ferguson’s debarment and the length of his debarment is consistent with the OIG’s past debarments issued to similarly situated contractors. Therefore, for the reasons stated above and as further detailed in the OIG Debarment Report, the OIG now respectfully requests that this Honorable Body affirm the 20-year debarment issued on March 25, 2024.

Respectfully submitted by:


Ellen Ha, Esq., CIG
City of Detroit Inspector General

Dated: 5/8/24

Subscribed and sworn to before me
this 8th day of May, 2024.


Notary Public, Wayne County
My commission expires: 30 - June - 2029

KANYIA FOSTER
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Jun 30, 2029
ACTING IN COUNTY OF Wayne